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ABSTRACT

The report's facts and conclusions come from the eight major studies of Southern school desegregation completed by the Commission between 1959 and September 1969, the Commission's 1968 hearing in Montgomery, Alabama, the hundreds of complaints received involving school desegregation (which are completely listed in Appendix B), and data supplied by the Office of Education and by the Department of Justice. The report deals with enforcement of desegregation as ordered by Title VI of the Civil Rights Act of 1964, Section 602 of which requires each Federal division extending Federal assistance to enforce Title VI in its programs. The major topics discussed are: the present level of achievement in school desegregation; obstacles to the enforcement of school desegregation, including a partial listing in Appendix A of Southern efforts to delay elementary and secondary school desegregation; the importance of governmental enforcement of school desegregation; the implications of the July 3, 1969 statement (reprinted in Appendix C) for future Federal enforcement; and Federal enforcement efforts in the Summer of 1969. (JM)

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A REPORT OF THE
UNITED STATES COMMISSION
ON CIVIL RIGHTS

FEDERAL ENFORCEMENT
OF
SCHOOL DESEGREGATION

September 11, 1969

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... /T/here are many places still in this country where the schools are either "white" or "Negro" and not just schools for all children as the Constitution requires. In my opinion there is no reason why such a wholesale deprivation of constitutional rights should be tolerated another minute.

—Justice Hugo L. Black of the
United States Supreme Court in
Alexander v. Holmes County Board
of Education
September 5, 1969

For an American who is devoted to his country and wants to believe in the intelligence and good-will of its citizens it is very painful to contemplate and difficult to understand continued resistance to school desegregation.

—Julius J. Hoffman, United States
District Judge for the Northern
District of Illinois, in
U.S. v. Cook County School District 151,
May 15, 1969 38 U.S.L.W. 2009

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Appendix A: A partial list of the major efforts of some State and local officials and governments in the South to block or to delay desegregation of elementary and secondary schools.

Appendix B: A complete list of complaints involving school desegregation received by the Commission from June 1, 1967 through June 15, 1969.

Appendix C: Text of the July 3, 1969, Joint Statement of the Attorney General and the Secretary of Health, Education, and Welfare.

I. Introduction

A. Explanation of this Report

The Brown I decision, 347 U.S. 483 (1954), held that racially segregated public schools were unconstitutional. The Court invited the parties to appear again, to help it decide the best way to implement the requirements of the Constitution. In the Brown II decision, 349 U.S. 294 (1955), the Court announced its standard: school districts must begin desegregating immediately, and proceed with "all deliberate speed". If additional time were required, the Court warned that:

> The burden rests upon the defendants to establish that such time is necessary in the public interest and is consistent with good faith compliance at the earliest practicable date. 1/

From that time to the present, the one remaining issue in school desegregation has been that of the time a district should be allowed until it achieves full desegregation.

Fifteen years after the decision of the Supreme Court in Brown v. Board of Education, only one of every six black pupils in the South attends a desegregated elementary or secondary school. This Report is intended as a guide to some of the problems of dealing with this disregard of the law. It will concentrate heavily upon inadequacies in past and present Federal efforts to desegregate schools.

This Report draws heavily for its facts and conclusions on the eight major studies of Southern school desegregation completed by the Commission between 1959 and the present, the Commission's 1968 hearing in Montgomery, Alabama, the hundreds of complaints involving school desegregation received by the Commission, and data supplied to the Commission at various times by the Office of Education of the Department of Health, Education, and Welfare and by the Department of Justice. 2/

1/ 349 U.S. at 300.

2/ For a list of these studies and hearings, see p. 24 below.

B. Overview of Efforts to Achieve School Desegregation

By 1964, a decade had passed since the Brown decision. Up until that date, the bringing of lawsuits by private litigants was the only method available for attacking segregated school systems. In 1964, however, the school systems in the Southern and Border States were still largely segregated.

One reason for the passage of Title VI of the Civil Rights Act of 1964 3/ was to provide a means of accelerating school desegregation. The Congressional debate over the passage of Title VI clearly indicates that supporters viewed its passage as a means of finally effectuating the constitutional requirements of Brown.

Senator Pastore, for instance, stated during the debate on Title VI:

> All that the bill is trying to do is to take that edict of the Supreme Court and make it apply nationally and universally, so that we do not have to take every single case of discrimination into court. 4/

Section 602 of the Act 5/ requires each Federal department and agency extending most types of Federal financial assistance to enforce Title VI in the programs under its jurisdiction. If recipients of Federal

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3/ 42 U.S.C. secs. 2000d to 2000d-4 (1964).

4/ 110 Cong. Rec. 8057.

5/ 42 U.S.C. sec. 2000d-1 (1964).

financial assistance covered by sec. 602 continue to discriminate among the intended beneficiaries of the Federal program on the basis of race, color, or national origin, this statute authorizes the department or agency to cut off the Federal funds flowing to the discriminatory recipient.6/

When HEW first began to enforce Title VI in January 1965, it tried, by negotiations with individual school districts, to encourage them to submit satisfactory voluntary desegregation plans. To make allowance for individual problems, HEW did not establish any general, uniform requirements that a satisfactory desegregation plan had to fulfill. In light of HEW's limited enforcement staff, the impracticality of this approach soon became obvious.

In April, 1965, HEW's Office of Education issued its first set of uniform, generally applicable standards implementing Title VI in the area of school desegregation. These standards--commonly referred to as "guidelines"--were intended to be a workable means of effectuating the provisions of Title VI. Since then, they have been amended several times, and have received the strong support and endorsement of the courts. 7/

The most recent set of guidelines was issued in March, 1968. Speaking of the need to change the structure of a racially dual school system, the guidelines state:

> Generally school systems should be able to complete the reorganization necessary for compliance with the law by the opening of the 1968-69 or, at the latest, 1969-70 school year. 8/

6/ Such an action can be taken only after notice to the recipient and provision of a hearing, if desired. The decision of HEW hearing officers can be appealed within the Department and, as with all departments and agencies, can be appealed from the Department to the courts.

7/ In U.S. v. Jefferson County Board of Education, 372 F.2d 836, 851 (5th Cir., 1966) aff'd en banc 380 F.2d 385 (1967) cert. den. sub nom. E. Baton Rouge Parish School Board v. Davis, 389 U.S. 840 (1967), the Fifth Circuit reaffirmed an earlier statement that it attached "great weight" to the guidelines.

In Kemp. v. Beasley, 352 F.2d 14, 18 (1965) the Eighth Circuit, while affirming the judiciary's right to establish independent desegregation requirements, stated that the guidelines "must be heavily relied upon". And in Smith v. Board of Education of Morrilton School District No. 32, 365 F.2d 770, 780 (1966) that Circuit stated that "the HEW guidelines, although not binding on the courts, are entitled to serious judicial deference."

8/ U.S. Department of Health, Education, and Welfare, Policies on Elementary and Secondary School Compliance with Title VI of the Civil Rights Act of 1964, sec. 11.

On July 3, 1969, the Attorney General and the Secretary of Health, Education, and Welfare jointly announced "new, coordinated procedures" for the Federal effort to desegregate elementary and secondary schools. The following are among the main features of this new policy:

1) The major focus of Federal efforts to desegregate elementary and secondary schools will be through litigation brought by the Department of Justice. The use of HEW's administrative proceedings, backed by the threat of a termination of Federal funds, will be de-emphasized.

2) The two Departments will begin a substantial program of desegregation in areas of the North, the Midwest, and the West, where _de facto_ racial segregation in schools results from discriminatory housing patterns.

3) The Departments will refuse to require the completion of desegregation in all districts by "a single arbitrary date" or by means of "a single, arbitrary system."

4) The Departments will continue to accept freedom-of-choice plans [9] where such a plan "genuinely promises" to achieve desegregation at an early date.

5) HEW will provide more advice and assistance to school districts undergoing desegregation.

6) The Departments intend to recommend legislation to provide "a selective infusion of federal funds for such needs as school construction, teacher subsidies and remedial education" to aid desegregation.

A copy of the July 3 joint statement has been attached to the end of this Report as Appendix C. The July 3 statement did not purport to change the Guidelines.

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[9] See p. 14 below for a description of how freedom-of-choice plans work.

II. The Present Level of Achievement in School Desegregation

A. The Numbers Game, Part I: The Number of Districts in Compliance

The July 3 statement issued jointly by the Attorney General and by the Secretary of Health, Education, and Welfare marshalls an impressive array of statistics to support its contention that there is "a steadily shrinking core of resistance" to school desegregation, and that "most Southern and border school districts ... have come into voluntary compliance ... ." 10/ It states that, of 4,477 school districts located primarily in the 17 Southern and Border States which formerly imposed racial segregation by law, 2,994 have desegregated voluntarily and completely. It then lists statistics for a number of in-process-of-compliance categories, and concludes that 121 districts have had Federal funds terminated and only 263 districts still remain to be proceeded against. 11/

These figures appear to indicate that Federal and private efforts to desegregate schools have achieved such great success that full desegregation is just around the corner. Too easily, they lend themselves to the implication that Federal enforcement efforts have been largely successful in the past and can thus be relaxed in the future.

This is, however, misleading. For reasons that are discussed below, the fact that a school district has been placed in any particular compliance category — whether "completely desegregated", operating under an HEW-approved voluntary desegregation plan, or operating under a court order to desegregate — does not necessarily mean that significant school desegregation has taken place or is taking place in the school. Apart from this, the figures themselves are misleading. 12/

First, the July 3 statement refers to 4,477 school districts, of which 2,994 are now "completely desegregated". According to figures prepared in July, 1969, by HEW's Office for Civil Rights at the request of the Commission, for example, at least 1,018 of the "completely desegregated" districts have no black students at all in them. 13/

10/ July 3 statement at 5.

11/ *Id.* at 4.

12/ This is also apart from the fact that 67 districts dropped unaccountably from sight in the breakdown of the status of the 4,477 districts' compliance.

13/ These figures were obtained by extension from an HEW-directed survey of school districts. The State breakdowns follow:

State	Number of "Completely Desegregated" Districts In Five Border States	Number of "Completely Desegregated" Districts Without Any Black Students
Arkansas	240	156
Kentucky	185	38
Missouri	505	212
Oklahoma	816	390
Texas	921	222
Total	2,667	1,018

Second, HEW statistics 14/ indicate that 3,564 of the districts included in that figure are in the Border States, where there are relatively few Negroes and where resistance to desegregation has been relatively weak. Accordingly, 2,880 of the 2,994 districts enumerated as "completely desegregated" are Border State districts. In such circumstances, "complete desegregation" is today an accomplishment requiring little effort.

Figures for districts in seven particular Southern States, 15/ we believe, are a more accurate measure of the depth of the "steadily shrinking core of resistance" 16/ remaining to be overcome. Of the 914 school districts in these States, only one-eighth--114--have been classified, under the July 3 statement's enumeration, as "completely desegregated".

The distinction drawn here between the Border States and the seven States is supported by one further statistic: On July 3, 1969, one out of every 210 Border State school districts was under an HEW fund cutoff. On the same date, one out of every 9 school districts in the seven States was under such a cutoff.

B. The Numbers Game, Part II: Districts in Paper Compliance

The July 3 statement enumerates 330 school districts as having complied with the law by filing acceptable desegregation plans with HEW, and states that 333 more are in the process of completing such plans.

Experience has shown that the compliance of many such districts--and of many among the 2,994 "completely desegregated" districts, which are required only to file assurances of their compliance--is a thing more often proclaimed than practiced. Early in 1966, for example, the Commission formally found:

> 6. Some school districts which have filed assurances of compliance accepted by the Office of Education are not actually in compliance.
>
> 7. Some school districts which have filed desegregation plans accepted by the Office of Education are not complying with the plans. 17/

14/ These statistics are as of July 3, 1969, the day of the Joint Statement.

15/ These are Alabama, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Virginia. These States were selected because they seem to be having greater present difficulty in desegregating their schools than other States, or have had more recent episodes of "massive resistance".

16/ July 3 statement at 5.

17/ Survey of School Desegregation in the Southern and Border States, 1965-66, Findings at 52.

Again, in July of 1967 the Commission formally found that many districts had violated their pledges:

> 8. Many school districts fell far short of the Office of Education guidelines during the 1966-67 school year. The Office of Education did not enforce the guidelines as written. ... /T/he great majority of school districts in Alabama, Georgia, Louisiana, Mississippi, and South Carolina failed to meet the standards of the guidelines 18/

C. The Numbers Game, Part III: Districts Under Court Orders Which Do Not Require Reasonable Efforts to Desegregate

The July 3 statement states that 369 districts are under court orders to desegregate. This does not mean, however, that these 369 districts have been required to take any meaningful steps to desegregate their school systems. Frequently, court orders have imposed less than minimal requirements. 19/

The Court of Appeals for the Fifth Circuit observed in 1966 that many court orders in that Circuit were excessively lenient, and that school boards took advantage of this judicial lenience to avoid the more detailed commitments required by HEW:

> The announcement in HEW regulations that the Commissioner would accept a final school desegregation order as proof of the school's eligibility for federal aid prompted a number of schools to seek refuge in the federal courts. Many of these had not moved an inch toward desegregation. In Louisiana alone twenty school boards obtained quick decrees providing for desegregation according to plans greatly at variance with the Guidelines. 20/

18/ Southern School Desegregation, 1966-67, Findings at 88-89.

19/ As a general indication of the problem, in 1966, the Fifth Circuit called attention to the disparity between its previously-announced standards for all school desegregation orders within the Circuit, and their implementation by the district courts:

> Of the 99 court-approved freedom of choice plans in the circuit, 44 do not desegregate all grades by 1967; 78 fail to provide specific, non-racial criteria for denying choices; 79 fail to provide any start toward faculty desegregation; only 22 provide for transfers to take courses not otherwise available ...

United States v. Jefferson County Board of Education, 372 F.2d 836, 860 n. 52 (5th Cir., 1966) aff'd. en banc, 380 F.2d 385 (1967), cert. den. sub nom. East Baton Rouge Parish School Board v. Davis, 389 U. S. 840 (1967).

20/ 372 F.2d at 859.

In a footnote, the court illustrated its point:

> The following statement appeared in the Shreveport Journal for July 1, 1965: "The local school boards prefer a court order over the voluntary plan because HEW regulations governing the voluntary plans or compliance agreements demand complete desegregation of the entire system, including students, faculty, staff, lunch workers, bus drivers, and administrators, whereas the court-ordered plans can be more or less negotiated with the judge." This was not news to the Court. 21/

In its 1967 Report, the Commission found that such lenient court orders continued to be a problem. 22/ This situation has not changed. 23/ Although the Courts of Appeals can reverse such orders, they have only limited power to review the trial court's determination of facts. This, and the time required for appellate review, combine to make such orders effective in delaying desegregation.

D. The Numbers Game, Part IV: Districts Which Have Failed to Comply with the Court Orders Against Them

Even among those school districts under court orders requiring reasonable efforts to desegregate, many are still an active part of what the July 3 statement termed the "steadily shrinking core of resistance".

In case after case, district courts have entered desegregation orders that have largely been ignored by local officials. Last year, the Eighth Circuit called attention to one such instance:

> In January 1966, the District Court ordered faculty integration to commence in 1966-67. Yet, there were no steps taken whatsoever to implement this until a token gesture was made in 1967-68. 24/

In Board of Public Instruction of Duval County, Florida v. Braxton, the Fifth Circuit quoted part of the trial court's findings of fact:

> (5) It is convincing on the record before me that the defendant(s) ... are either incapable or unwilling to undertake full and meaningful compliance with either the strict tenor or the broad objectives of the provisions of the January 24, 1967 order. 25/

21/ Id. at 859, note 49.

22/ Southern School Desegregation, 1966-67, Finding No. 10 at 89.

23/ See, e.g., Anthony v. Marshall County Board of Education, discussed below at p.15.

24/ Kemp v. Beasley, 389 F.2d 178, 180 note 2 (1968).

25/ 402 F.2d 900, 904 (1968).

Judge Coleman, concurring in that case, spoke more broadly of his and the Fifth Circuit's experience:

> It was widely asserted that our decision in Jefferson would take the Courts out of the school business. No such result was accomplished. The Courts are kept in this business when local school boards do not willingly and intelligently comply with the mandates of the United States Constitution, as interpreted by the Supreme Court. Such failures are causing the Courts to move from one inadequate approach to another 26/

Rightly or wrongly, many judges have felt that the traditional remedies for defendants who have violated court orders — proceedings to hold the guilty parties in criminal or civil contempt of court — are inappropriate to apply against local school officials, particularly in view of the community pressures resisting desegregation that these officials must face. As a result, many school districts have flouted court orders with impunity, and the ever stricter pronouncements of appellate courts have been, in practice, a matter of little concern to them.

III. Obstacles to the Enforcement of School Desegregation

A. The Unwillingness of Most School Districts to Take Any Action in the Absence of Coercion

In 1968, the Eighth Circuit stated:

> The simple, troubling truth becomes increasingly apparent: in a formerly de jure segregated school system, equality of education for Negro students is only as far away as local school boards want it to be. 27/

26/ Id. at 908.

27/ Kemp v. Beasley, supra note 24 at 181.

In the past, the Fifth Circuit has had occasion to speak of "footdragging public school boards" and to plead with them "to move". 28/ In February, 1969, Judge Wisdom of that Circuit stated:

> Fifteen years after Brown, school boards in the Western District of Louisiana are still unwilling to face up to the prerequisites to effective desegregation. 29/

Similarly, the Supreme Court observed, in a case decided June 2, 1969:

> Obviously voluntary integration by the local school officials in Montgomery had not proved to be even partially successful. Consequently, if Negro children of school age were to receive their constitutional rights as we had declared them to exist, the coercive assistance of courts was imperatively called for. 30/

B. The Resistance of State Officials and State Governments.

Appendix A lists several major incidents in which State governments and State officials have exerted their powers to delay local desegregation or avoid it altogether.

The nature and scope of official resistance to school desegregation, in these and in other States, is discussed more fully in the Appendix. One of the primary effects of such actions has been the encouragement of local officials to act in defiance of the law, and the encouragement of local whites to act to block desegregation themselves, and to impede any efforts local officials might make to comply with the law.

28/ Singleton v. Jackson Municipal Separate School District, 348 F.2d 729 (1965).

29/ Cleveland v. Union Parish School Board, 406 F.2d 1331, 1332 (dissenting from an order denying plaintiffs' motions for immediate hearing en banc).

30/ United States v. Montgomery County Board of Education, 37 U.S.L.W. 4461, 4462.

Although many of the states then involved in such efforts have now abandoned them, the spirit of defiance for the law that they engendered still remains to make the implementation of desegregation difficult.

Some states, however, have not abandoned such efforts. In 1967, for example, a three-judge Federal district court commented on the efforts of the Alabama State Board of Education and the results they achieved:

> Not only have these defendants, through their control and influence over the local school boards, flouted every effort to make the Fourteenth Amendment a meaningful reality to Negro school children in Alabama; they have apparently dedicated themselves and, certainly from the evidence in this case, have committed the powers and resources of their offices to the continuation of a dual public school system such as that condemned by Brown v. Board of Education ... . As a result of such efforts ... today only a very small percentage of students in Alabama are enrolled in desegregated school systems. 31/

More recently, the remarks made by the Governor of Georgia, if correctly reported, 32/ are a further indication that, while token efforts to enforce desegregation now raise no outcry, efforts which have even the appearance of meaningful enforcement of the law are sometimes met with great hostility.

C. The Continued Use of Freedom-of-Choice As a Means of Desegregating Schools

1. Description of Freedom-of-Choice Plans

Under this method of desegregation, each family with children attending the public schools must choose the particular school their children will attend in the following year. White families almost invariably choose to have their children attend the predominantly white school, and most Negro families choose to have their children attend the all-black school.

Black parents who wish their children to attend an integrated school must make this affirmative choice. Although the Supreme Court stated in Brown II that the burden of desegregation was upon the school boards, this method of desegregation places a large share of the burden upon those least able to carry it.

31/ Lee v. Macon County Board of Education, 267 F.Supp. 458, 465 (M.D. Ala., 1967) (three-judge court) aff'd sub nom Wallace v. United States, 389 U.S. 215 (1967).

32/ See, e.g., the Washington Post, July 10, 1969, at A 1. According to this report, Governor Maddox:

> ... said he is willing to go to court or to jail, give up all Federal aid and shut down Georgia schools rather than bow to the ultimatum.
>
> "My God, what's wrong with freedom of choice?" he exclaimed.

2. Ineffectiveness of Freedom-of-Choice Plans

One of the primary reasons school districts undergoing desegregation favor freedom-of-choice plans is that they do not work. On at least one occasion, a Federal district judge has favored a freedom-of-choice plan for the same reason. On July 6, 1968, Judge William C. Keady of the Northern District of Mississippi, Western Division, ruled that freedom-of-choice was the only practical means of school desegregation in Holly Springs and in Marshall County.

His decision, he said, was based on evidence submitted by the school boards that both of the other two methods considered—the "pairing" of schools 33/ and geographic zoning 34/—would result in immediate and almost complete integration. He added:

> This appears from the uncontradicted evidence in this case. There is no assault made by the plaintiffs upon those hard, realistic, practical facts. 35/

The court then found that the presence of Negro students in schools attended by whites would "necessarily lower" the quality of education. 36/ The type of plan to be favored, therefore, was freedom-of-choice — the method which would result in the least integration. 37/ Later Judge Keady was reversed by the Fifth Circuit, which ordered the districts involved to abandon the freedom-of-choice plans they were using and to develop a more effective means of desegregating. 38/

33/ Under a "pairing" plan, for example, the formerly white-attended school would handle grades one through five, and the formerly black-attended school would handle grades six through nine. There are many different variations of the "pairing" concept.

34/ Under a "zoning" plan, students living within a particular area will attend the school serving that area. The effectiveness of a zoning plan in integrating schools depends upon the extent of residential segregation.

35/ *Anthony* v. *Marshall County Board of Education*, Civil Action No. WC 6819 (N.D. Miss., July 6, 1968), slip opinion at 8.

36/ *Id.*

37/ Later, speaking of the Marshall County school system, the judge underscored this point when he stated that the results of a logical zoning plan on the racial composition of the schools would be "strikingly deleterious." *Id.* at 19.

38/ 409 F.2d 1287 (1969).

3. An Example: Lack of Progress Under Freedom-of-Choice Plans in Louisiana

School systems desegregating under court orders in the Fifth Circuit have been required since 1967 to submit periodic reports on the progress of their desegregation to the district courts which entered the desegregation orders against them, and to the plaintiffs in their cases. 39/ The following statistics 40/ are drawn from reports filed by nine school systems desegregating under freedom-of-choice plans decreed by the Federal district courts of Louisiana. 41/ These systems represent over one out of every eight school districts in that State. 42/

The statistics provide substantial evidence that freedom-of-choice is an almost totally ineffective method of desegregating elementary and secondary schools in the Deep South. They also furnish some indication of the progress likely to be achieved in the future by districts desegregating under HEW-approved plans, if that Department's standards are limited by the Whitten Amendment.

39/ United States v. Jefferson County Board of Education, supra note 7.

40/ These statistics represent actual enrollment figures.

41/ Statistics for districts in the Western District of Louisiana are taken from appellants' brief in Cleveland v. Union Parish School Board, No. 27087, dated February 17, 1969. Those for the Eastern District are taken from appellants' brief in Carter v. West Feliciana Parish School Board, No. 26450, dated March 1969. Both cases are now pending before the Fifth Circuit.

42/ There are a total of 67 school districts in the State of Louisiana.

	1967-68 School Year	1968-69 School Year
City of Monroe School System		
1. Total Number of Negro Students	5,249	4,952
2. Total Number of White Students	5,775	5,703
3. Number of Negro Students Attending Predominantly White Schools	22	54
4. Percentage of Total Negro Students Who Are Attending Predominantly White Schools	0.4%	1%
5. Number of White Students Attending Predominantly Negro Schools	0	0
Claiborne Parish School System		
1. Total Number of Negro Students	2,352	2,334
2. Total Number of White Students	1,695	1,704
3. Number of Negro Students Attending Predominantly White Schools	24	23
4. Percentage of Total Negro Students Who Are Attending Predominantly White Schools	1%	1%
5. Number of White Students Attending Predominantly Negro Schools	0	0
Concordia Parish School System		
1. Total Number of Negro Students	3,240	3,189
2. Total Number of White Students	3,767	3,767
3. Number of Negro Students Attending Predominantly White Schools	32	37
4. Percentage of Total Negro Students Who Are Attending Predominantly White Schools	1%	1%
5. Number of White Students Attending Predominantly Negro Schools	0	0

	1967-68 School Year	1968-69 School Year
East Feliciana Parish School System		
1. Total Number of Negro Students	2,930	2,912
2. Total Number of White Students	1,320	1,396
3. Number of Negro Students Attending Predominantly White Schools	33	52
4. Percentage of Total Negro Students Who Are Attending Predominantly White Schools	1%	1.7%
5. Number of White Students Attending Predominantly Negro Schools	0	0
Jackson Parish School System		
1. Total Number of Negro Students	1,525	1,564
2. Total Number of White Students	2,354	2,317
3. Number of Negro Students Attending Predominantly White Schools	78	83
4. Percentage of Total Negro Students Who Are Attending Predominantly White Schools	5%	5.3%
5. Number of White Students Attending Predominantly Negro Schools	0	0
Ouachita Parish School System		
1. Total Number of Negro Students	4,858	4,831
2. Total Number of White Students	12,801	13,044
3. Number of Negro Students Attending Predominantly White Schools	47	79
4. Percentage of Total Negro Students Who Are Attending Predominantly White Schools	0.9%	1.6%
5. Number of White Students Attending Predominantly Negro Schools	0	0

	1967-68 School Year	1968-69 School Year
Union Parish School System		
1. Total Number of Negro Students	2,058	2,098
2. Total Number of White Students	2,558	2,589
3. Number of Negro Students Attending Predominantly White Schools	9	14
4. Percentage of Total Negro Students Who Are Attending Predominantly White Schools	0.4%	0.6%
5. Number of White Students Attending Predominantly Negro Schools	0	0
West Feliciana Parish School System		
1. Total Number of Negro Students	1,856	1,760
2. Total Number of White Students	844	734
3. Number of Negro Students Attending Predominantly White Schools	140	119
4. Percentage of Total Negro Students Who Are Attending Predominantly White Schools	5%	6.7%
5. Number of White Students Attending Predominantly Negro Schools	0	0
Winn Parish School System		
1. Total Number of Negro Students	1,528	1,520
2. Total Number of White Students	2,402	2,392
3. Number of Negro Students Attending Predominantly White Schools	58	69
4. Percentage of Total Negro Students Who Are Attending Predominantly White Schools	3.8%	4.5%
5. Number of White Students Attending Predominantly Negro Schools	0	0

4. Reasons for the Ineffectiveness of Freedom-of-Choice: The Hostility of Local Whites to Desegregation

There are a number of reasons why freedom-of-choice is ineffective as a means of desegregating schools. Since white families almost always choose to have their children attend the predominantly white school, the burden of desegregating the schools in a district falls entirely upon the black families living there. Accordingly, most Negro families choose to have their children attend the all-black school, and those few black families who choose to send their children to the predominantly white school can be—and are—singled out and subjected to pressure and abuse.

In 1967, the Commission reported that:

> During the past school year, as in the previous year, in some areas of the South, Negro families with children attending previously all-white schools under free choice plans were targets of violence, threats of violence and economic reprisal by white persons and Negro children were subjected to harassment by white classmates notwithstanding conscientious efforts by many teachers and principals to prevent such misconduct 43/

It concluded that such activities led many black families to continue sending their children to the all-black schools.

For these and other reasons, the Commission concluded in 1967 that, in the vast majority of cases, freedom-of-choice plans are inadequate as an instrument for desegregating schools. A former Commissioner of Education agreed, in his testimony before a Congressional subcommittee:

> When our fieldworkers investigate free-choice plans which are not producing school desegregation they find that in almost all instances the freedom of choice is illusory. Typically, the community atmosphere is such that Negro parents are fearful of choosing a white school for their children. 44/

Similarly, the Supreme Court has stated that "the general experience under 'freedom of choice' to date has been such as to indicate its ineffectiveness as a tool of desegregation", 45/ and that, if such a plan "fails to undo segregation, other means must be used to achieve this end." 45a/ The Court, however, thought it possible that freedom-of-choice might be an effective means of desegregation in some areas, and refused to ban it outright.

43/ Southern School Desegregation: 1966-67, Finding No. 6(b), at 88.

44/ Testimony of Harold Howe II, United States Commissioner of Education, Hearing Before the Special Subcommittee on Civil Rights of the House Committee on the Judiciary, 89th Cong. 2d Sess., ser. 23 at 24 (1966).

45/ Green v. County School Board of New Kent County, Va., 391 U.S. 430, 440 (1968).

45a/ Id., quoting Judge Sobeloff, concurring in Bowman v. County School Board of Charles City County, Va., 382 F.2d 326, 333 (4th Cir., 1967).

As the July 3 statement indicates, HEW will continue to accept freedom-of-choice plans where they promise to be effective. One of the dangers of accepting freedom-of-choice as a method of desegregation in even a limited number of cases is that the following types of incidents are likely to recur, since they are likely to be effective in delaying desegregation: 46/

(a). Violent Intimidation

Because of the impact of mass communications, the effects of such intimidation spread far beyond the immediate locality where the acts take place. In its 1967 Report, the Commission concluded that:

> Fear of retaliation and hostility from the white community continue to deter many Negro families from choosing formerly all-white schools 47/

Although this is frequently considered a thing of the past, it has occurred, and continues to occur frequently enough to cause fear among large numbers of Negroes.

On August 13, 1968, for example, a Federal district court found that a local chapter of the Ku Klux Klan had been formed in Crenshaw County, Alabama, to forcibly prevent the desegregation of the public schools in that county and intimidate Negro parents who chose to send their children to the white schools. 48/

In addition, Commission staff attorneys have investigated the following incidents: 49/

——Clay County, Mississippi. The parents of a 12 year-old black student told Commission staff attorneys of a warning they had received just before school opened in August 1966:

> White folks told some colored to tell us that if the child went, he wouldn't come back alive or wouldn't come back like he went.

46/ In the Commission's 1967 study of school desegregation, parents of Negro children attending formerly all-white schools were asked why, in their opinion, more of their neighbors did not choose to send their children to the schools which were desegregating. Of the 237 parents interviewed, 142, or 59.9 percent, used the word fear, or afraid, or similar expressions in their response. "Of persons using such expressions, more than half indicated that fear of job loss, termination of credit, eviction or similar economic reprisal was deterring their neighbors; the remainder suggested that fear of violence was operating as a deterrent." Southern School Desegregation: 1966-67 at 55.

47/ Id., Finding No. 6(a), at 88.

48/ United States v. Crenshaw County Unit of United Klans of America, 290 F. Supp. 181 (M.D. Ala., 1968).

49/ These incidents are reported in greater detail in the Commission's Report, Southern School Desegregation: 1966-67, at 47-51.

During the night after the child registered in the white school three shots were fired into the family's home. In September and again in October, shots were fired into the family car. Other Negro families in Clay County whose children chose to attend white schools received similar threats.

——Chickasaw County, Mississippi. Of the 1,255 Negro children in the school district, three children—brothers and sisters from one family—chose to attend white schools. On the first day of school in 1966, shots were fired through a living room window. In October and November, shots were again fired into the home. The school superintendent, when interviewed by Commission staff attorneys, mentioned the shooting as evidence of the kind of community opposition facing the school board in its desegregation efforts.

——Sharkey-Issaquena Counties, Mississippi. On November 24, 1966 shots were fired into the home of Mrs. Lillie Willis. Her 13 year-old daughter, who had unsuccessfully tried to transfer to the white-attended school, was hit in the face by shotgun pellets and lost the sight in her right eye.

——Edgecomb County, North Carolina. On December 9, 1966 shots were fired into the home of a Negro family whose daughter was attending a formerly all-white school.

——Williamsburg County, South Carolina. A Negro family with five children attending formerly all-white schools reported a shot fired into their home on September 26, 1966.

(b). Economic Coercion

Roughly half of the Negro children in the South between the ages of 5 and 19 live in rural areas or small towns. 50/ White persons have used the limited possibilities for employment, credit and other necessities, and the widespread poverty among Negroes in these towns, as a lever to retard desegregation and as a club to retaliate against parents who have chosen to send their children to the white-attended schools.

A young Negro couple, Mr. and Mrs. Bernard Shambray, described this situation at the Commission's hearing in Montgomery, Alabama, over a year ago. Mrs. Shambray testified that her son wanted to attend a white elementary school, but her husband would not allow him to go. Mr. Shambray explained in his testimony:

> ... Greenville is a small community, and we somewhat depend on the white people for our living ... most of us feel that we don't want to do anything that might jeopardize us in any way. 51/

50/ Southern School Desegregation, 1966-67 at 47.

51/ Transcript of Hearing before the U.S. Commission on Civil Rights, Montgomery, Alabama, April 27- May 2, 1968, at 39.

Mr. Shambray's feeling was based on local experience. A Negro tenant farmer who lived outside Greenville told Commission attorneys that in September 1966—after his daughters had signed the choice forms to attend a white school—his landlord told him to move, saying, "I'm just not up for colored children going to a white school."

In Dorchester County, South Carolina, a Negro truckdriver, who had been fired from his job after his children enrolled in the white-attended schools, received this Christmas greeting in 1966 from his former employer:

> I hope all of you and yours are well and fine for the holidays. I also hope some day you will forgive me for what the public forced me and my brothers to do. However, I think of you fondly and as a friend. 52/

In the Crenshaw County Unit case, the district court found that the Klan had attempted to cause this kind of pressure to be exerted:

> Several white employers testified that pressure was put upon them by some of the defendants to discharge Negro employees whose children had chosen to attend previously white schools. Two white store owners testified that they were "asked" by an employee of the defendant Bodiford to sign a petition indicating that they would not sell to, extend credit to, or aid in any way several listed Negroes who had enrolled children in the white schools. Owners who expressed reluctance to sign were told they would be boycotted. 53/

(c). Conduct of School Officials and White Students

In many school districts, black students attending predominantly-white schools told Commission attorneys that they had received not only fair treatment but affirmative encouragement from their new teachers. In some districts, on the other hand, students complained that their teachers used, or permitted the use of, racial epithets in the classroom, refused to call on Negro pupils to recite and subsequently gave them lower grades than white students because of their allegedly poor recital. Commission attorneys found several indications of official misconduct designed to influence Negroes not to choose formerly all-white schools or to penalize Negroes for selecting such schools. 54/

52/ Southern School Desegregation: 1966-67, at 53-54.

53/ 290 F.Supp. at 183-84.

54/ This information has been drawn largely from staff interviews conducted in a number of school districts in the Southern and Border States during the 1966-67 school year. See Southern School Desegregation, 1966-67 at 61-65.

In one Alabama county, for example, the parents of 15 Negro students who had previously chosen to send their children to the formerly all-white schools for the 1966-67 school year had withdrawn their choices. The superintendent admitted to Commission attorneys that he had contacted every parent who had made such a choice, but stated that he had only told the parents that their children had a right to attend the all-white schools. All of the parents but one, however, informed the Commission that they would have left their children in the previously all-white school but for the superintendent's assertion that he would be the only Negro child in the school or that he could not guarantee the child's safety. The remaining couple asserted that their application had been a mistake. 55/

Another important reason for the reluctance of black children, particularly those of high school age, to attend traditionally-white schools is the feeling that they will not be allowed to participate in the normal extracurricular activities -- athletics, social and service organizations and other activities -- to the extent that they would have participated in the all-black school. A rising tide of black awareness, and pressure by black teachers fearful of losing their jobs if complete desegregation is achieved, are also important reasons for this reluctance. 55a/

55/ This incident was also reported in Southern School Desegregation: 1966-67, at 61.

55a/ See The Washington Post, September 3, 1969, at p. A 23; *Id.*, August 28, 1969, at p. A 1.

5. Updated Information

From its creation in 1957 until the day of the July 3 joint statement, the Commission has received over 500 complaints involving segregated schools. Many of these complaints have enabled the Commission to update its information in the periods between its eight major studies of Southern school desegregation 56/ and the two hearings it has conducted which have involved this subject. 57/

56/ These studies, exclusive of the several less intensive studies performed on this subject by the Commission, and exclusive of several reports of the Commission's State Advisory Committees, are:

Report of the U.S. Commission on Civil Rights, 1959

1961 Report: Education

Staff Report: Civil Rights, U.S.A.—Public Schools, Southern States (1962)

Civil Rights: 1963

Staff Report: Public Education 1963

Staff Report: Public Education 1964

Survey of School Desegregation in the Southern and Border States, 1965-66

Southern School Desegregation: 1966-67

In 1967, the Commission issued a major study of related problems in the North, Racial Isolation In the Public Schools. Many libraries have copies of these reports.

57/ These hearings were held in Memphis, Tennessee, on June 25-26, 1962, and in Montgomery, Alabama, from April 27 to May 2, 1968. Transcripts of these hearings are available.

Appendix B, a list of school complaints received by the Commission since the publication of its 1967 report on school desegregation, illustrates what has been occurring in the last two years. The categories covered are:

a) Complaints that schools are still segregated;

b) Complaints of harassment of minority children attending formerly all-white schools;

c) Complaints about discrimination in the employment of minorities by the schools;

d) Complaints about segregated school activities;

e) Miscellaneous complaints.

6. The Whitten Amendment

The House of Representatives has recently added an amendment to H.R. 13111, the appropriations bill for the Department of Health, Education, and Welfare and for some other agencies. It provides:

> Sec. 408. No part of the funds contained in this Act may be used to force busing of students, the abolishment of any school, or to force any student attending any elementary or secondary school to attend a particular school against the choice of his or her parents or parent.
>
> Sec. 409. No part of the funds contained in this Act shall be used to force busing of students, the abolishment of any school or the attendance of students at a particular school as a condition precedent to obtaining Federal funds otherwise available to any State, school district, or school.

If passed by the Senate and signed by the President, this amendment would restrict the manner in which HEW could enforce Title VI of the Civil Rights Act of 1964. 58/ In effect, it would forbid HEW from forcing those school districts which have not yet been placed under court orders to

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58/ 42 U.S.C. sec. 2000d to 2000d-5 (1964). Sec. 2000d provides:

> No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Sec. 2000d-1 states that each Federal department and agency "is authorized and directed to effectuate the provisions of section 2000d of this title ... ."

abandon freedom-of-choice desegregation plans as a condition for receiving Federal financial assistance. In addition, some Federal judges have reportedly indicated that, if the Amendment becomes law, they will follow this Congressional policy even though the Amendment does not apply to them directly.

Moreover, a number of recent decisions of the Fifth Circuit have ordered HEW's Office of Education to negotiate with school districts to develop new desegregation plans that will then be made the basis of a court order to desegregate. Where HEW and the school district do not agree, each may suggest a plan to the court, and the court would make a choice. 59/ There is a substantial danger that sec. 408 of the Whitten Amendment could be interpreted to forbid HEW from recommending that the court order the school district to abandon its freedom-of-choice plan and adopt a nonracial plan of pupil assignment that does not depend upon freedom-of-choice. If such a construction were adopted, the Whitten Amendment may have almost as strong an impact upon the courts as it would have on HEW's enforcement of Title VI.

IV. The Importance of Governmental Enforcement of School Desegregation

A. The Alternative: Private Litigation As a Means of Enforcement

Until passage of the Civil Rights Act of 1964, with its provisions allowing the Attorney General to bring school desegregation suits where there is a private complainant 60/ and with Title VI, which provided for administrative enforcement, 61/ private litigation was the sole means of implementing *Brown*.

59/ See, *e.g.*, *Davis* v. *Board of School Comm'rs of Mobile County*, _____ F. 2d _____ (Docket No. 26,886, 5th Cir., June 3, 1969).

60/ Title IV of the Civil Rights Act of 1964, 42 U.S.C. secs. 2000c *et seq.* (1964).

61/ 42 U.S.C. secs. 2000d *et seq.* (1964).

Although the Supreme Court had said in 1955 that the burden of desegregation rested upon school officials, enforcement of the decision lay almost entirely on the shoulders of those who had been discriminated against. The only way for black families in a school district to send their children to a white-attended public school was for one of their number to step forward, find a lawyer willing to take the case, and sue the local school officials. For ten years, this was the only procedure available in almost all of the nearly 3000 racially segregated school districts in the Southern and Border States at the time of the Brown decision. 62/

In addition to the physical and economic harassment that frequently resulted, one of the greatest problems faced by such a parent was often simply finding a lawyer willing to take the case. The Supreme Court has alluded to this problem:

> Lawsuits attacking racial discrimination, at least in Virginia, are neither very profitable nor very popular. They are not an object of general competition among Virginia lawyers; the problem is rather one of an apparent dearth of lawyers who are willing to undertake such litigation. 63/

Attorneys from other States have occasionally relieved this dearth by coming to the South and handling civil rights cases. In a suit to enjoin Louisiana's prosecution of one such lawyer—for practicing without a Louisiana license—a Federal three-judge court for the Eastern District of Louisiana said:

> The circumstances surrounding the arrest and charge against Sobol, and the course of the Duncan case, convince us that Sobol was prosecuted only because he was a civil rights lawyer forcefully representing a Negro in a case growing out of the desegregation of the Plaquemines Parish school system. ...

62/ 1959 Report at 296. Although there were almost 8,700 school districts in these States, less than 3,000 had both black and white students in them. Many of these districts have been consolidated since that time.

63/ NAACP v. Button, 371 U.S. 415,443 (1963) (footnote omitted). This case involved an attempt of the State of Virginia to restrict the activities of the NAACP in fostering civil rights litigation.

> This prosecution was meant to show Sobol that civil rights lawyers were not welcome in the parish, and that their defense of Negroes involved in cases growing out of civil rights efforts would not be tolerated. It was meant also as a warning to other civil rights lawyers and to Negroes in the parish who might consider retaining civil rights lawyers 64/

In its various Reports since passage of the Civil Rights Act of 1964, the Commission has found that the school desegregation efforts of the Federal Government, both by litigation brought by the Department of Justice, and by administrative proceedings conducted by HEW, were seriously inadequate. To the extent that this will remain true in the future, black families will be forced, once again, to shoulder the burden of finding a lawyer willing to sue to desegregate the schools in their areas.

As long as freedom-of-choice plans are accepted by the courts and by HEW, of course, a major share of the burden of implementing Brown will fall upon black families--those politically, socially, and economically least able to bear it. Without a lawyer's knowledge of their rights and without the resources of an organization behind them, these families are not often able to withstand the pressures that are frequently brought to bear upon those who attempt to enjoy their rights under Brown.

B. Avoidance of Retaliatory Pressure Upon the Complainant

Litigation by the Department of Justice possesses a significant advantage over privately-brought litigation: although a qualified private individual must step forward to complain before either type of suit can be brought, the Civil Rights Act of 1964 enables the Department of Justice to bring the action in the name of the United States, without identifying the person who complained. 65/

HEW's administrative enforcement of Title VI does not require a complainant at any stage of the proceedings, and thus deprives local whites of a focus for retaliatory pressure--until black parents begin choosing to send their children to the white-attended schools.

In private litigation, the complainant's name is revealed when the suit is filed and the prospect of retaliation against a complainant is as likely as it is for black parents choosing to send their children to the all-white school. The likelihood of such action on the part of local whites deters many potential complainants.

64/ Sobol v. Perez, 289 F.Supp. 392, 401-02, (E.D. La., 1968) (three-judge court).

65/ 42 U.S.C. sec. 2000c-6(a) (1964). In the debate on this provision, Senator Humphrey stated:

> Under no circumstances will the Attorney General be required to reveal the names of the particular complainants.

110 Cong. Rec. 6543. See also United States v. Greenwood Municipal Separate School District, 406 F.2d 1086 (1969).

C. The Availability of Governmental Resources

1. The Need for Such Resources In Litigation

Across the South, school boards have used the judicial process to delay the actual implementation of desegregation. The United States Court of Appeals for the Fifth Circuit listed the following proceedings involving a single school desegregation case, against the New Orleans public schools:

> In Bush v. Orleans Parish School Board the complaint was filed September 5, 1952. Bush's peregrinations through the courts are reported as follows: 138 F. Supp. 336 (3-judge 1956) motion for leave to file petition for mandamus denied, 351 U.S. 948, 76 S.Ct. 854, 100 L.Ed. 1472 (1956); 138 F.Supp. 337 (1956), aff'd 242 F.2d 156 (1957), cert. den'd, 354 U.S. 921, 77 S.Ct. 1380, 1 L.Ed.2d 1436 (1957); 252 F.2d 253, cert. den'd 356 U.S. 969, 78 S.Ct. 1008, 2 L.Ed.2d 1074 (1958); 163 F.Supp. 701 (1958), aff'd, 268 F.2d 78 (1959); 187 F.Supp. 42 (3-judge 1960), motion to stay den'd, 364 U.S. 803, 81 S.Ct. 28, 5 L.Ed.2d 36 (1960), aff'd 365 U.S. 569, 81 S.Ct. 754, 5 L.Ed.2d 806 (1961); 188 F.Supp. 916 (3-judge 1960), motion for stay denied, 364 U.S. 500, 81 S.Ct. 260, 5 L.Ed.2d 245 (1960), aff'd, 365 U.S. 569, 81 S.Ct. 754 (1961); 190 F.Supp. 861 (3-judge 1960), aff'd 366 U.S. 212, 81 S.Ct. 1091, 6 L.Ed. 2d 239 (1961); 191 F.Supp. 871 (3-judge 1961), aff'd Denny v. Bush, 367 U.S. 908, 81 S.Ct. 1917. 6 L.Ed.2d 1249 (1961); 194 F.Supp. 182 (3-judge 1961), aff'd, Tugwell v. Bush, 367 U.S. 907, 81 S.Ct. 1926, 6 L.Ed.2d 1250 (1961), Gremillion v. United States, 368 U.S. 11, 82 S.Ct. 119, 7 L.Ed.2d 75 (1961); 204 F.Supp. 568 (1962); 205 F.Supp. 893 (1962), aff'd in part and rev'd in part, 308 F.2d 491 (1962); 230 F.Supp. 509 (1963). 66/

This case is an extreme example of such a dilatory use of litigation. More typical was a case involving the Savannah, Georgia school board:

> This is the fourth or fifth appearance of this case in this court, considering both temporary measures and appeals on the merits. We simply do not consider it worth while to take the time to canvass the exact number of times in which we have been called upon to correct the actions of the District Court for the Southern District of Georgia, which have been brought to us for review. 67/

Although Bush was handled throughout most of its course by private litigants, few black families and few legal organizations have the resources to withstand for long the tactics of delay used in Bush and in Stell.

66/ U.S. v. Jefferson County Board of Education, 372 F.2d 836, 860 fn. 51 (5th Cir., 1966) aff'd en banc, supra note 7.

67/ Stell v. Board of Public Education for City of Savannah, 387 F.2d 486, 489 (5th Cir., 1967).

2. The Need for Such Resources in Policing Compliance with Court Orders and Title VI Assurances

The discussion above indicates that, although some school districts will respect the terms of the assurances they have signed with HEW or of the court orders that have been entered against them, many will not. 68/ These districts must be regularly monitored, and periodically coerced into performing as they have promised or as they have been ordered.

Monitoring the performance of such districts includes more than a simple statistical check of their achievement. It involves, for example, comparing the curricula offered at the predominantly-white schools with those offered at the black-attended schools.

Private litigants and their attorneys rarely have the skills and the resources necessary to monitor such districts. Without the use of Governmental resources, or a large infusion of private resources not now available, such monitoring is not likely to be carried out and these districts will continue to be desegregated in name only.

A number of factors, including the increasing residential segregation in the South, have enabled Southern evasion of desegregation to become more sophisticated. Some of the tools available, such as "tracking" systems, school construction policies and school zone boundary adjustments, have long been in use by Northern school systems. Detecting and proving their illegitimate use frequently requires educational expertise, a resource not normally available to private litigants. By contrast, such expertise can be built into HEW's enforcement machinery.

68/ See pp. 9-10 and 11-13 above.

D. Comparison of Enforcement by Private Litigation with Federal Enforcement: The Scope of the Progress Achieved

This table compares the scope of the progress that had been achieved in the ten years after Brown--when enforcement lay entirely in the hands of private individuals--and the progress that has been achieved since passage of the Civil Rights Act of 1964 and the beginning of Government-brought litigation and administrative enforcement.

Table 1

Percentage of Negro Students Attending Desegregated Schools in Seven Southern States in the 1963-64 and 1968-69 School Years

State	1963-64 School Year: Percentage of All Negro Students [69]	1968-69 School Year: Percentage of All Negro Students [70]
Alabama	.007%	7.4%
Georgia	.052%	14.2%
Louisiana	.602%	8.8%
Mississippi	.000%	7.1%
North Carolina	.537%	27.8%
South Carolina	.003%	14.9%
Virginia	1.63 %	25.7%

V. Federal Enforcement In the Future: The Implications of the July 3 Statement

The major features of the July 3 statement have been listed above. [71] For further details, see the text of the statement in Appendix C.

A. The Decision to Emphasize Litigation, and not Termination of Federal Funds, as the Vehicle of Enforcement

This approach could help to resolve some problems. First, a number of school districts which have never been sued have become convinced that they could evade desegregation indefinitely simply by foregoing Federal funds. A demonstration that this sacrifice is ineffective might lead such districts to apply for Federal funds, and might strengthen HEW's bargaining power in negotiations with them. Second, selective use of litigation may redress situations in which the termination of Federal funds will affect primarily black students.

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[69] U.S. Commission on Civil Rights, 1964 Staff Report: Public Education at 291.

[70] U.S. Department of Health, Education and Welfare release, January 16, 1969, at Table 1.

[71] See p. 7 above.

News reports over the past several months have focussed on the alleged practice, in a number of Southern districts, of spending far greater amounts of local and State funds in the predominantly-white schools, so that Federal funds are channelled almost exclusively into the black-attended schools. 72/ The funds involved have frequently been appropriated under Title I of the Elementary and Secondary Education Act of 1965, 73/ and are intended to provide assistance for the education of children from low-income families. In the South, schools attended by children from low-income families, and therefore eligible to receive Title I funds, are frequently those attended by black children.

Under these circumstances, allocating disproportionately large amounts of State and local funds to white-attended schools means that Federal funds, instead of enriching and improving black-attended schools serving children of low-income families, are used to replace the State and local funds that would otherwise have gone to these schools. Such a practice also means that a termination of Federal funds will harm black-attended schools to a far greater extent than it would if the district had not engaged in this budgetary charade.

There are, of course, relatively simple procedures that could be used to guard against such abuses. Title I requires that HEW adopt fiscal control and fund accounting procedures to ensure that this abuse and other kinds of abuses, will not occur. 74/ HEW has never implemented this requirement, 75/

72/ See, *e.g.*, The Washington *Post*, June 21, 1969, at A 2; *Id.*, August 25, 1969, at A 2.

73/ 20 U.S.C. secs. 241a to 241m (Supp., 1968).

74/ 20 U.S.C. sec. 241 f (a) (2), which requires that State educational agencies, through which Title I funds are channelled to local school systems, must submit applications providing satisfactory assurance:

> that such fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid to the State (including such funds paid by the State to local educational agencies) under this part ... .

75/ Title I funds may be withheld from a State or from any school system within a State if, after notice and opportunity for hearing, the Commissioner of Education finds that there has been a substantial failure to comply with the assurances filed. 20 U.S.C. sec. 241j. No proceedings to terminate funds under this section have ever been begun. HEW's regulations merely repeat the terms of sec. 241f(a)(2), and provide no means to implement it or standards that would assist State educational agencies to implement it. 45 C.F.R. Part 116.31(d) (1969).

although the Commissioner of Education has recently indicated that he intends to ensure that Title I funds are spent more equitably. 75a/

Other agencies apparently view similar requirements with a great deal more seriousness. 76/

1. Administrative Proceedings Are More Effective Than Judicial Proceedings in the Desegregation of Schools

There are, however, many problems flowing from the decision to emphasize litigation. Some of them are underscored by the fact that Congress enacted Title VI to provide an administrative means of desegregating elementary and secondary schools. To an extent, the mere fact of its passage indicates some dissatisfaction with the pace set by the courts.

Two years after the passage of Title VI, the Report of the White House Conference, "To Fulfill These Rights", spoke of this matter:

> It was the Congressional purpose, in Title VI of the Civil Rights Act of 1964, to remove school desegregation efforts from the courts, where they had been bogged down for more than a decade. Unless the power of the Federal purse is more effectively utilized, resistance to national policy will continue and, in fact, will be reinforced. ... Judicial proceedings by the Attorney General can play an important role in enforcement, but litigation cannot be made a substitute for the administrative proceedings prescribed by Congress as the primary device of enforcing Title VI. Those school districts which remain in outright defiance of national policy should be subjected immediately to administrative action, lest the credibility of the national policy remain any longer in doubt. 77/

75a/ HEW release dated August 19, 1969.

76/ The Federal Maritime Commission, for instance, has adopted stringent accounting and budgetary controls for applicants for construction-differential and operating-differential subsidies under Titles V and VI of the Merchant Marine Act of 1936, 46 U.S.C. 1151-61, 1171-83a (Supp., 1968). See 46 C.F.R. Parts 251 to 293 (1969). These requirements are spelled out in 147 pages of the Code of Federal Regulations, and provide detailed guidance to the applicant for Federal assistance and to the Commission in its review of the uses to which the subsidy has been put.

77/ Report of the White House Conference, "To Fulfill These Rights", at 63 (emphasis in original). The conference was held June 1-2, 1966.

The courts themselves greeted the passage of Title VI with what seems to have been a sense of relief that the primary burden of desegregation would fall upon Federal agencies in the future. The Supreme Court, for instance, stated in 1968:

> Congress, concerned with the lack of progress in school desegregation, included provisions in the Civil Rights Act of 1964 to deal with the problem through various agencies of the Federal Government. 78/

Judge Wisdom, speaking for the Fifth Circuit, went into greater detail:

> We read Title VI as a congressional mandate for change — change in pace and method of enforcing desegregation. The 1964 Act does not disavow court-supervised desegregation. On the contrary, Congress recognized that to the courts belongs the last word in any case or controversy. But Congress was dissatisfied with the slow progress inherent in the judicial adversary process. Congress therefore fashioned a new method of enforcement to be administered not on a case by case basis as in the courts but generally, by federal agencies operating on a national scale and having a special competence in their respective fields. Congress looked to these agencies to shoulder the additional enforcement burdens resulting from the shift to high gear in school desegregation. 79/

Later in his opinion, Judge Wisdom stated:

> Title VI of the Civil Rights Act of 1964, therefore, was not only appropriate and proper legislation under the Thirteenth and Fourteenth Amendments; it was necessary to rescue school desegregation from the bog in which it had been trapped for ten years. 80/

78/ Green v. County School Board of New Kent County, 391 U.S. 430, 433 n. 2 (1968)

79/ U.S. v. Jefferson County Board of Education, *supra* note 7, 372 F.2d at 852-53 (footnotes omitted).

80/ *Id.* at 856 (footnote omitted).

Judge Brown of the Fifth Circuit spoke with an almost audible sigh of relief shortly after the first HEW guidelines were released:

> These executive standards, perhaps long overdue, are welcome. To many, both on and off the bench, there was great anxiety in two major respects with the Brown approach. The first was that probably for the one and only time in American constitutional history, a citizen — indeed a large group of citizens — was compelled to postpone the day of effective enjoyment of a constitutional right. ... Second, this inescapably puts the Federal Judge in the middle of school administrative problems for which he was not equipped ... . By the 1964 Act and the action of HEW, administration is largely where it ought to be — in the hands of the Executive and its agencies with the function of the Judiciary confined to those rare cases presenting justiciable, not operational, questions. [81]

2. The Pace of Desegregation is Far Faster in Districts Operating Under HEW's Guidelines Than in Districts Operating Under Court Orders.

Table 2

Percentage of Negro Students Attending Desegregated Schools in Seven Southern States in the Fall of 1968 [82]

State	Percentage in Districts Under Court Order	Percentage in Districts Operating Under Voluntary Plans (HEW Guidelines)	Total Percentage for All Districts
Alabama [83]	7.4%		7.4%
Georgia	7.9%	18.4%	14.2%
Louisiana	8.6%	24.0	8.8%
Mississippi	4.3%	12.0%	7.1%
North Carolina	24.1%	27.3	27.8%
South Carolina	7.5%	15.4%	14.9%
Virginia	13.9%	25.6%	25.7%
Percentage In All Seven States	9.4%	21.0%	16.1%

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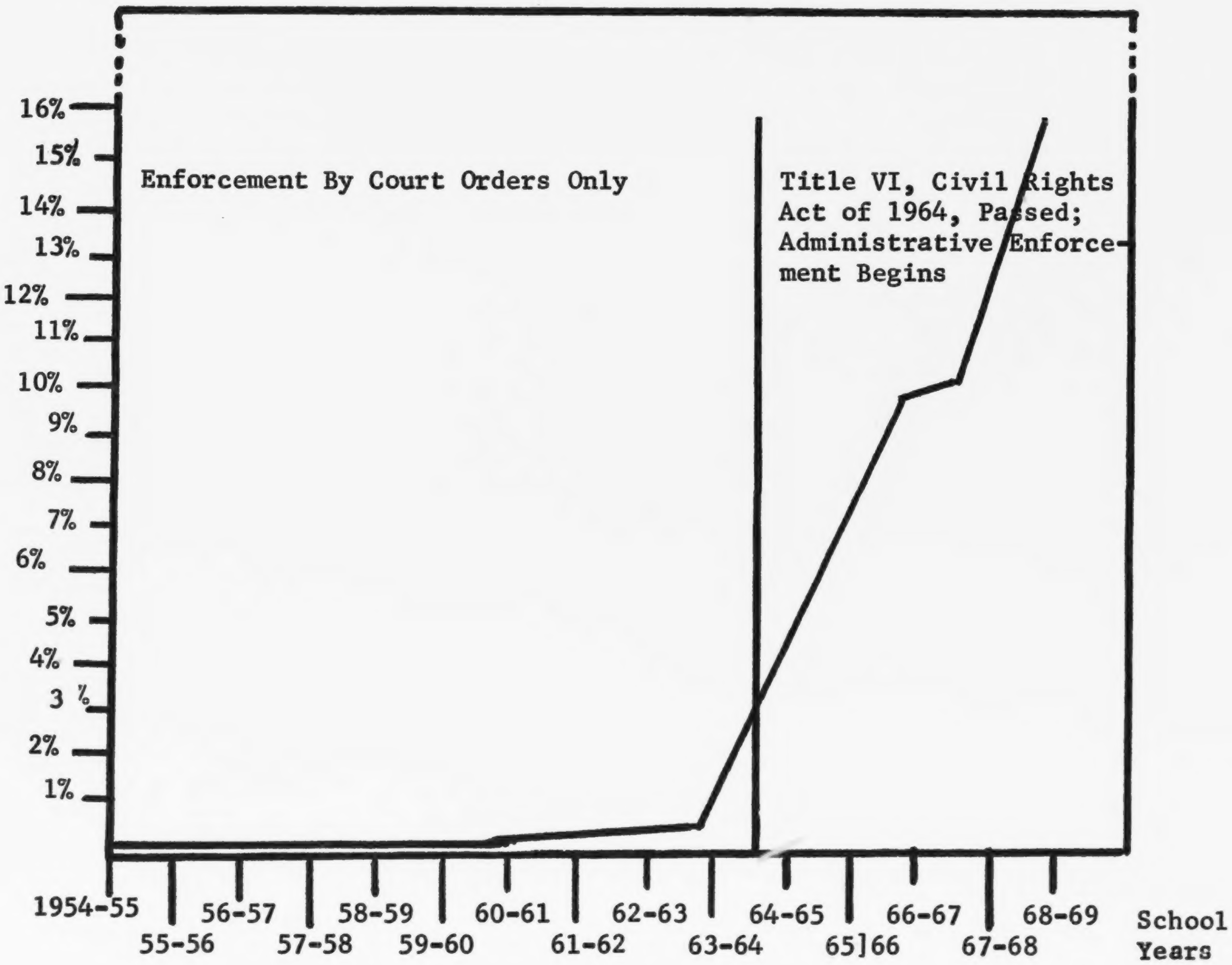
[81] *Price v. Denison Independent School District Board of Education*, 348 F. 2d 1010, 1013-14 (1965).

[82] See Note 70, above, at Tables 2 and 3.

[83] Alabama school districts are under a statewide court order, and there are no districts desegregating under the Guidelines. The order was entered by a three-judge court in *Lee* v. *Macon County Board of Education*, *supra* note 31.

CHART A

PERCENTAGE OF NEGRO STUDENTS ATTENDING DESEGREGATED SCHOOLS IN SEVEN SOUTHERN STATES



The States involved are Alabama, Georgia, Louisiana, Mississippi, North Carolina, South Carolina and Virginia. Save for North Carolina and for **Virginia,** in none of these States did the percentage of Negro students attending desegregated schools, whether under court orders or administrative enforcement, ever exceed 16 percent. Source: Various Reports of the United States Commission on Civil Rights; data and estimates supplied by the Office of Education.

3. The Futility of Suing Districts Which Fail to Comply with the Title VI Assurances They Have Given HEW

As indicated above, 84/ there are many school districts which fail to comply with the terms of the Title VI assurances they have given to HEW, and any meaningful effort to desegregate schools must provide a means for monitoring such districts and periodically coercing them into performing as they have promised. Such monitoring has been carried out, although on an inadequate scale, 85/ for school districts desegregating under the HEW Guidelines. HEW has, in the past, begun proceedings to terminate Federal financial assistance to such districts when it has found that they have not been performing as they have promised.

84/ See pp. 9-10 and 11-13 above.

85/ See Southern School Desegregation: 1966-67, Finding No. 8, at 88-89. See also text at 47-51 below.

It does seem probable that Department of Justice litigation limited to changing the status of such districts from that of districts desegregating under the Guidelines to that of districts desegregating under a court order will have little beneficial effect. As they have failed to comply with the one, so can they be expected to fail to comply with the other.

4. Emphasis Upon Court Orders May Hamper Desegregation

(a). Where the Order is Inadequate and Does Not Require Reasonable Efforts to Desegregate

Many court orders entered against school districts impose only minimal requirements that have not resulted in any appreciable desegregation in the past, and are unlikely to do so in the future. 86/ Although HEW's guidelines may set far more stringent requirements for districts receiving Federal financial assistance, it is required to accept any final court order as proof of compliance with Title VI, as long as the district files an assurance that it will comply with the court order. 87/ The district is then eligible to receive Federal funds.

Although not all district judges characteristically issue inadequate desegregation orders, some do. 88/ If the decision to emphasize litigation as the primary vehicle of Federal desegregation efforts is implemented in cases that will come before such district judges, the primary effect of the Justice Department's suit would be to relieve the district sued from the necessity of making reasonable efforts to desegregate before becoming eligible for Federal funds. Its unintended side effect will be to encourage those districts in areas served by such sympathetic Federal judges to refuse to negotiate meaningfully with HEW, and to seek the safety of a relatively toothless court order.

86/ See text and citations at 10-11 above.

87/ This requirement has been contained in HEW's regulations since , 1965. 45 C.F.R. Part 80.4 (c) (1969). Congress has embodied this requirement in Title VI by the addition of a new section, 42 U.S.C. sec. 2000d-5 (Supp., 1968), as amended by sec. 112 of P.L. 90-247, 81 Stat. 787:

> Provided, That, for the purpose of determining whether a local educational agency is in compliance with this subchapter, compliance by such agency with a final order or judgment of a Federal court for the desegregation of the school or school system operated by such agency shall be deemed to be compliance with this subchapter, insofar as the matters covered in the order or judgment are concerned.

88/ See note 19, at 10 above.

(b). Where the School District Fails to Comply with the Order

When a school district agrees with HEW on a desegregation plan and later fails to comply with its terms, HEW has the power to enforce the district's compliance with the plan by beginning proceedings leading up to a termination of Federal funds 89/ After a district has been placed under a court order, however, this administrative means of enforcing compliance does not seem to be available. 90/

HEW, instead, is limited to auditing and supervising districts under court orders, to see whether they are effectively implementing the orders. If HEW determines that they are not, it could then petition the particular court involved to make a judicial determination of the district's compliance. Only after this could Federal financial assistance be terminated. 91/ At this stage, however, the courts would be likely to continue to rely on their own procedures to bring the district into compliance, and would be unlikely to permit the termination of Federal aid.

(c). Impediment to Desegregation: Segregationist Bias Among Some Federal District Judges

The decision to shift the emphasis of Federal school desegregation efforts from administrative proceedings involving termination of Federal funds to litigation will shift many responsibilities from HEW hearing personnel to Federal district judges. Among the most important of these responsibilities are the determination of several factual questions:

a) the speed with which a particular district should desegregate, in light of its particular situation;

b) the extent to which specific remedies, such as the closing of some or all all-Negro schools, are necessary;

89/ 45 C.F.R. Part 80.8 (1969).

90/ In Lee v. Macon County Board of Education, supra note 31, the three-judge court entered a statewide school desegregation order. HEW had previously declared the Lanett City, Alabama, school system, one of those affected by the order, "out of compliance" and begun a proceeding to terminate Federal funds. After the statewide order was entered, HEW refused to re-establish the district's eligibility, concluded the proceeding, and terminated Federal funds. In a supplementary proceeding, the three-judge court stated that the HEW action was "based upon a determination by those officials that the Lanett City school system was not, in fact, complying with the decree of this Court." 270 F. Supp. at 863. The court held that HEW could not make such a final determination "and act independently of any court action to terminate federal financial assistance." Id. at 865. The court then enjoined HEW from terminating Federal funds to that or any other school system covered by the statewide order.

91/ This procedure was suggested by the court in Lee v. Macon County Board of Education, 270 F. Supp. at 866-67.

c) the determination of whether school districts are reasonably complying with the orders entered by the court against them.

A small minority of Federal judges, however, have indicated by their past judicial actions that they will not, where school desegregation or other civil rights cases are concerned, discharge their responsibilities impartially. As early as 1963, the Yale Law Journal documented such bias. After discussing the long series of delays in the district judges' handling of Meredith v. Fair 92/ and United States v. Lynd, 93/ the Note continued:

> The delays occasioned in Meredith and Lynd, and caustically noted by the appellate court, do not appear to be accidental or limited; they are a generic feature of civil rights litigation in the deepest south — Georgia, Alabama, Mississippi and Louisiana. ... /T/he frequent reaction of commentators and appellate courts as well as actions taken by these courts to alleviate its effect, testify not only to the delay, but to its source — the reluctance of district trial judges to grant timely or compliant enforcement of civil rights. 94/

92/ Meredith v. Fair, 199 F. Supp. 754 (S.D. Miss. 1961), aff'd, 298 F.2d 696 (5th Cir., 1962) 202 F. Supp. 224, motion for injunction pending appeal denied per curiam, 305 F.2d 341, rev'd, 305 F.2d 343, mandate clarified, 306 F.2d 374 cert. den., 371 U.S. 828 (1962). Judge Mize of the Southern District, since deceased, was the trial judge in this case.

93/ Unreported in the district court, rev'd and injunction granted by Circuit Court, 301 F.2d 818 (5th Cir., 1962), cert. den. 371 U.S. 893 (1962). Judge Cox of the Southern District of Mississippi, the trial judge in this voting case, had insisted that the Government amend its complaint to:

> ... allege in great detail the name of each applicant who had sought and been denied the right to register, the date of each such application, the name of each Negro who had been refused the right to register, the dates involving any discriminatory mishandling of any Negro registration applications, the names of white people allowed to register who possessed no better qualifications than such Negroes denied the same privilege, and other facts and circumstances ...

Judge Cox then refused to allow the Government access to the registrar's records. 301 F.2d at 820.

94/ Note, "Judicial Performance in the Fifth Circuit", 73 Yale L. J. 90, 93-95 (1963) (footnotes omitted). The former editor-in-chief of the Virginia Law Review has reached the same conclusion. See Note, "The Congress, the Court, and Jury Selection: A Critique of Titles I and II of the Civil Rights Bill of 1966", 52 Va. L. Rev. 1069, 1087-89 (1966).

The notewriters then drew attention to another problem:

> Delay in rendering a decision is compounded when a decision is entered which fails to follow binding authority, necessitating appeal, reversal, and remand. Such an occurrence in a lower federal court is regrettable for it represents an abdication of a district judge's duty to abide by the limiting directives of higher courts. But examples of disobedience of higher courts by a southern district judge in civil rights litigation are numerous. 95/

In the following incidents, a number of Southern Federal judges have demonstrated a pro-segregation bias. For most of them, this bias has led to such judicial abdications of duty in cases involving the civil rights of Negroes. In a few of the instances reported below, the conduct of the judges seems to have been a flagrant violation of judicial ethics.

——1) In January, 1967, Judge William Harold Cox of the Southern District of Mississippi refused to convene a grand jury that would have considered evidence leading to possible indictments against several white men for the murders of Vernon Dahmer, a Negro leader from Hattiesburg, Mississippi, who had been slain by a fire-bomb in 1966, and of Michael Schwerner, Andrew Goodman, and James Chaney, civil rights workers who were slain in Neshoba County, Mississippi, in 1964. Judge Cox reportedly stated that he would not convene a grand jury to consider these murder cases until the Government requested a grand jury investigation of the Child Development Group of Mississippi, a local Head Start organization funded by the Office of Economic Opportunity and allegedly controlled by persons who were active in the civil rights movement. 96/

——2) On May 28, 1969, in Hall v. St. Helena Parish School Board, 97/ the Fifth Circuit rejected freedom-of-choice as a means of desegregating schools in a number of cases from the Western District of Louisiana because the method did not have a real prospect of desegregating the school systems involved. The court of appeals ordered the defendant school boards to develop a desegregation plan in conjunction with representatives of HEW's Office of Education.

95/ Id. at 97 (footnote omitted).

96/ New York Times, January 13, 1967, p. 12; New York Times, February 2, 1967, p. 38.

97/ The consolidated cases, Docket Nos. 26450 and 27303, have not yet been reported in the Federal Reporter (Second Series) Advance Sheets.

Following the July 3 statement by the Attorney General and the Secretary of Health, Education, and Welfare, Judge Ben C. Dawkins, Jr., Chief Judge of the Western District of Louisiana, issued an order on July 8, 1969, addressed to the school boards and attorneys involved in each of the school cases in that district "and most especially to all representatives of HEW, and the citizens of the Western District of Louisiana". 98/ After noting that it "would be highly unethical ... at this stage to comment upon or discuss publicly and specifically the situation concerning any particular school district" 98a/ he went on to observe:

> In general, however, we can state without reservation that the new policies issued today (July 3rd) give all of us — federal courts, school boards, parents of school age children, and even those of pre-school age grandchildren, such as my own four grandchildren, three of whom are not yet in school — a sort of new breath of fresh air to replace the virtually intolerable situation all of us were faced with prior to the new policy developments announced today.
>
> ... All of us — black and white alike — owe a debt of eternal gratitude, not only to the obvious compassion of President Nixon, Secretary Finch and Attorney General Mitchell — but to the untiring efforts of many, many good people of all political ties who have worked tirelessly behind the scenes to bring this about. ... 99/

Judge Dawkins went on to say that the "greatest credit of all belongs to Honorable Joe D. Waggoner of the 4th Congressional District", and continued:

> We have talked and conferred with him many, many times in the past five weeks since the May 28 decision of the 5th Circuit Court of Appeals in New Orleans 100/

Judge Dawkins had also reportedly obtained information by telephone from Harry S. Dent, Special Assistant to the President, about possible changes in HEW's policies on school desegregation that might affect the cases then before his court. 101/

98/ July 8 statement at 6.

98a/ *Id.* at 7.

99/ *Id.* at 7-8.

100/ *Id.* at 8.

101/ See the Washington *Post*, July 27, 1969, at A 1 and A 6.

——3) Judge William C. Keady of the Northern District of Mississippi, Western Division, ruled on July 6, 1968, that freedom-of-choice was the only practical means of school desegregation in Holly Springs and in Marshall County because it would result in far less actual desegregation than geographic zoning or the "pairing" of schools. 102/

——4) In 1963, Judge E. Gordon West of the Eastern District of Louisiana, Baton Rouge Division, wrote, in the course of an opinion in a school desegregation case:

> I could not, in good conscience, pass upon this matter today without first making it clear, for the record, that I personally regard the 1954 holding of the United States Supreme Court in the now famous Brown case as one of the truly regrettable decisions of all times. Its substitution of so-called "sociological principles" for sound legal reasoning was almost unbelievable. As far as I can determine, its only real accomplishment to date has been to bring discontent and chaos to many previously peaceful communities, without bringing any real attendant benefits to anyone. 103/

In another school desegregation case, Judge West refused for two-and-a-half years to require a school board to develop a plan for desegregating its schools, and, indeed, refused to enter any appealable ruling at all. The Fifth Circuit then unanimously granted the plaintiffs' application for a writ of mandamus against Judge West, stating that:

> In this case neither the school authority nor the district court has accepted its responsibility. 104/

Although Judge West had filed no answer to the application for a writ of mandamus, he adopted the school board's response as his own. Speaking of this answer, the court of appeals stated:

> It shows startling, if not shocking, lack of appreciation of the clear pronouncements of the Supreme Court and this Court during the past year which make it perfectly plain that time has run out for a district court to temporize 105/

102/ The details of this case appear on p. 15 above.

103/ Davis v. East Baton Rouge Parish School Board, 214 F.Supp. 624,625.

104/ Hall v. West, 335 F. 2d 481, 484 (1964).

105/ Id. (Emphasis in original).

——5) In a voting rights case affecting Wilcox County, Alabama, Judge Daniel H. Thomas of the Southern District of Alabama found in 1964 that there had been no discrimination, although 70% of the voting-age population was black, there was not a single black person registered to vote, and over 90% of the voting-age whites were registered. 106/ The Fifth Circuit reversed him *per curiam*. 107/

——6) In a 1963 decision, Judge Frank M. Scarlett of the Southern District of Georgia found that the Savannah-Chatham County school system was racially segregated. Instead of ordering the school board to submit a desegregation plan, however, he allowed a group of white students to intervene and to present evidence that black students could not perform academically nearly as well as white students. Judge Scarlett then found that the inferior performance of black students was "attributable in large part to hereditary factors", was "inherent" and was "an unchangeable factor". 108/ The court concluded:

> Plaintiffs' assumption of injury to Negro students by the continuance of segregated schools is not supported by any evidence in this case. Whatever psychological injury may be sustained by a Negro child out of his sense of rejection by white children is increased rather than abated by forced intermixture, and this increase is in direct proportion to the number and extent of his contacts with white children. 109/

Judge Scarlett then decided that racial segregation in the public schools of Savannah-Chatham County was a reasonable classification under the equal protection clause of the Fourteenth Amendment, and dismissed the complaint.

106/ *United States* v. *Logue*, 9 Race Rel. L. Rep. 770 (S.D. Ala., 1964).

107/ 344 F.2d 290 (1965).

108/ *Stell* v. *Savannah-Chatham County Board of Education*, 220 F. Supp. 667, 683 (S.D. Ga., 1963), *rev'd*, 333 F.2d 55 (5th Cir., 1964), *cert. den. sub nom Roberts* v. *Stell*, 379 U.S. 933 (1964).

109/ 220 F. Supp. at 684.

Some idea of Judge Scarlett's subsequent handling of the case can be gleaned from an opinion issued by the Fifth Circuit in December, 1967:

> This is the fourth or fifth appearance of this case in this court, considering both temporary measures and appeals on the merits. We simply do not consider it worth while to take the time to canvass the exact number of times in which we have been called upon to correct the actions of the District Court for the Southern District of Georgia, which have been brought to us for review. 110/

Judge Scarlett then refused to follow part of the mandate given him by the Fifth Circuit in its December 1967 decision, and was reversed again in December, 1968. 111/

——7) As indicated above, Southern blacks with civil rights claims have often found it difficult to obtain lawyers to present these claims, and many of them would never have been presented had it not been for out-of-state lawyers coming into the South to handle such cases. 112/

In September, 1967, the judges of the Southern District of Mississippi severely limited the right of out-of-state attorneys to appear in their court. Generally, under the rule they adopted, no out-of-state lawyer could appear in a case in the Southern District unless he had been admitted to practice elsewhere for five years. Even then, the court allowed such an attorney to appear in only one case a year. In September, 1968, the Fifth Circuit granted a writ of mandamus against Judges Dan M. Russell, Jr., and W. Harold Cox, finding the rule invalid and restraining them from enforcing it. In so doing, the court found that the rule was not reasonable, and might hamper the ability of civil rights litigants to use the federal courts. 113/

110/ 387 F.2d 486, 489. In this particular proceeding, Judge Scarlett had ordered pupils to be assigned according to intelligence tests and teachers to be assigned and paid in accordance with their intelligence. The school board, the plaintiffs, and the United States, which had earlier intervened in the case, all appealed from the order in protest against these provisions. The facts are stated at 489-91.

111/ 405 F.2d 925.

112/ See pp. 26-28 above.

113/ Sanders v. Russell, 401 F.2d 241 (5th Cir., 1968).

These are extreme examples of hostility to civil rights among some members of the Federal judiciary in the South. While many Southern district judges are fully impartial in such unpopular cases, others display a segregationist bias in a less overt manner. Delaying a ruling on a civil rights matter, for instance, is a type of frustration of civil rights enforcement that is difficult for an appellate court to monitor. Similarly, an appellate court's limited power of review over a district court's factfinding makes it difficult to deal with a judge's practice of evaluating the evidence from the standpoint most favorable to those accused of discrimination. 114/ Under HEW's administrative enforcement of Title VI, by contrast, the facts found by the hearing examiner are fully subject to review within the Department. 115/ Finally, the time that elapses in obtaining appellate review in itself compounds these problems.

114/ A notewriter for the Virginia Law Review summarized these problems in October, 1966:

> Moreover, the manpower limitations of the Justice Department dictate that only a few suits can be initiated in the worst areas. Determined resistance, ... and legal stalling maneuvers on the part of state officials can frustrate the achievement of desegregation of Southern jury systems. The experience in voting rights also demonstrates that many federal district judges in the South are prepared to abet these tactics by delaying rulings for long periods of time, drafting findings of fact which ignore evidence of discrimination and which require extended and elaborate appeals, and issuing decrees which are simply inadequate to the purpose of ending discriminatory exercises of discretion by the local officials.

Note 94 above, at 1087-89 (footnotes omitted).

115/ 45 C.F.R. Part 80.10 (1969).

B. The Undermining of Federal Desegregation Efforts By Inadequate Manpower

1. The Need for Manpower

The text above indicates the deceptiveness of using, as a barometer of desegregation, the number of school districts which have signed Title VI pledges—or which have been placed under court orders—requiring them to make reasonable efforts to desegregate. Unless policed sufficiently, such districts frequently do not comply with the pledges they have signed, or obey the court orders that have been entered against them. 116/ The need for checking on such districts' performance requires enough manpower for statistical monitoring, for field investigations, and for compliance activities.

The decision to emphasize litigation rather than administrative proceedings does not lessen this need for manpower. Even in districts under court orders, HEW, to ensure compliance, must carry out statistical monitoring, field investigations and, probably, compliance activities short of termination of Federal financial assistance. 117/ The necessity of then petitioning the court to take action because of a school district's noncompliance with its order, even assuming the judge to be impartial, would involve delay compounded by other pressures on the court's docket, and this might well encourage recalcitrant districts to ignore HEW compliance attempts short of this step. Emphasis upon litigation, because of these and similar problems, could make as great or greater demands upon the Government's manpower than would reliance upon administrative procedures to terminate funds.

2. Federal Desegregation Efforts are Weakened by Seriously Inadequate Manpower

In 1967, the Commission formally found that HEW's efforts to desegregate Southern schools were seriously inadequate and that insufficient manpower was a major cause of this inadequacy:

> The Office of Education did not enforce the guidelines as written. Although the great majority of school districts in Alabama, Georgia, Louisiana, Mississippi, and South Carolina failed to meet the standards of the guidelines governing student transfers from segregated schools, only a small fraction of these districts have been subjected to enforcement action. Many specific prohibitions of the guidelines were not enforced. The lowering of enforcement standards stemmed in part from the fact that the staff of the Equal Educational Oppor-

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116/ See pp. 9-10 and 11-13 above.

117/ Such activities were suggested by the three-judge court in *Lee v. Macon County Board of Education*, *supra* notes 90 and 91.

> tunities Program was not large enough to conduct all needed field investigations or to prepare and conduct timely proceedings against all school districts failing to comply with the guidelines. 118/

Since that time, the problem of inadequate manpower has become worse, as HEW's enforcement staff for the desegregation of elementary and secondary schools in the South has dwindled. As recently as October 11, 1968, for example, HEW had 48 professional 119/ employees working on elementary and secondary school desegregation in the Southern and Border States. On March 1, 1969, this number had dropped to 34 professionals, a cut of more than 29 percent. 120/

Part of this reduction in the Southern enforcement program is due to a Congressional requirement that HEW assign as many personnel to the desegregation of elementary and secondary schools outside the Southern and Border States as it assigns to work on these problems in the Southern and Border States. 120a/

HEW has requested Congress to provide 75 additional employees for the Office for Civil Rights, which has many responsibilities besides that of school desegregation. The House has approved this request. 120b/

The enforcement efforts of the Department of Justice are also limited by the problem of inadequate manpower in the Civil Rights Division. At the time of the Commission's 1965 Report, Law Enforcement: A Report on Equal Protection in the South, this Division had an authorized strength of 105 attorneys, of which 86 were then employed. 121/ The Report concluded that the Division's efforts were inadequate, in part because its staff was inadequate to carry out the Division's responsibilities. 122/

At the end of August 1968, the Civil Rights Division had 96 attorneys, of whom 95 were working on Civil Rights Division matters. 123/ Despite this increase, the Commission found in its Political Participation report, issued three months earlier, that the Department's staff continued to be inadequate:

118/ Southern School Desegregation, Finding No. 8, at 88-89.

119/ Nonclerical.

120/ "A Report to Congress From the Secretary of Health, Education, and Welfare: Establishing a Nationwide School Desegregation Program Under Title VI of the Civil Rights Act of 1964", March 1, 1969, at 8 (Exhibit I).

120a/ Sec. 410 of Pub. Law 90-57, 82 Stat. 974 (Departments of Labor and Health, Education, and Welfare Appropriation Act of 1969).

120b/ Telephone conversation with HEW official September 10, 1969.

121/ 1965 Law Enforcement Report at 113.

122/ Id. at 118-19.

123/ Telephone conversation with Justice Department official, Aug. 26, 1969.

> The program evolved by the Department of Justice to enforce the Voting Rights Act is hampered by limitations of staff. These limitations are reflected in the absence of lawsuits in areas where they are needed to curb violations of the Act, and in the inability to cover adequately all geographical and substantive areas in which discrimination and violations of the Act are occurring. The process of informal negotiation and persuasion requires the presence of attorneys in large numbers to deal with local officials. In 1967 an effort to assure that personnel would be assigned to deal with problems of discrimination in the North as well as the South resulted in a reduction in the number of attorneys assigned exclusively to the South. 124/

As of August 25, 1969, the Civil Rights Division had 94 attorneys working on Division matters. It has 17 vacancies, all of which will be filled in the next few months, and hopes to be able to hire 17 more attorneys when the fiscal 1970 appropriations for the Department of Justice are passed. The Department had originally requested many more new positions from Congress. 125/

The problem of inadequate manpower to enforce civil rights legislation will probably be seriously aggravated by the July 3 statement's decision to emphasize use of the courts to enforce school desegregation, and to deemphasize the use of HEW's administrative processes. The Department, moreover, has proposed a nationwide expansion of the Voting Rights Act, and has also proposed reliance upon litigation, rather than administrative review, to determine whether various changes in election laws or procedures will tend to discriminate against minorities. 126/ Although the Commission has recommended that the Department of Justice and HEW begin a substantial enforcement program in the North and West, 127/ this is a new burden on an already undermanned Division. These additional burdens of responsibility and added reliance upon litigation to carry out existing and possible future responsibilities would likely make the problem of inadequate manpower more acute. The quality of enforcement efforts will be likely to decline as a result of these decisions.

124/ Political Participation at 185.

125/ For fiscal 1970, the Department had asked Congress for 62 new positions for the Civil Rights Division, of which roughly half would be attorneys. The House of Representatives cut the number of new positions to 40, and the Department agreed to accept this cut. The Department then, internally, cut that number to 39, and reassigned five of the remaining possible new positions to a new unit. The Civil Rights Division thus hopes to have 17 new attorneys from the 34 possible new positions. Telephone conversation with Justice Department official, Aug. 26, 1969.

126/ This proposal has been introduced in the Senate as S. 2057.

127/ Racial Isolation at 200-211; Southern School Desegregation at 92.

3. The Abandonment of Uniform Standards for Districts Desegregating Under HEW-Approved Plans Aggravates the Problem of Inadequate Manpower

The July 3 joint statement of the Attorney General and of the Secretary of Health, Education, and Welfare rejected the idea of a "single, arbitrary system" by which school desegregation should be achieved, and of a "single arbitrary date" by which it should be completed. 128/ It spoke of expanding HEW's cooperation with local districts by providing advice and assistance to them.

The true meaning of these statements will become apparent only in practice. There can be real advantages in tailoring a desegregation plan, in a very specific fashion, to a particular district; among the most important of these advantages is that local school officials will know exactly what is expected of them, and it will be correspondingly more difficult for them to rationalize their evasion of the plan. It would also be easier for HEW to monitor the district's performance.

Negotiating such plans and providing such assistance, however, would consume a large share of HEW's limited enforcement manpower. HEW has, after all, assigned only 34 professionals to deal with over 3,300 biracial school districts in the Southern and Border States. Even if these 34 men and women were to deal with only the 914 school districts in the seven most difficult States, 128a /, the caseload—almost 27 districts apiece—would allow little time for meaningful negotiations with school boards accustomed to the possibilities of delay as a tool for evading desegregation.

To an extent, the recent emphasis on negotiating with individual school districts repeats an experiment that had previously failed. When HEW first began to enforce Title VI in January 1965, it emphasized negotiations with individual school districts to encourage them to submit satisfactory desegregation plans. To make allowance for each district's particular problems, HEW did not establish any general, uniform requirements for satisfactory desegregation plans. This policy lasted for just three months; in April 1965, a set of uniform standards for acceptable plans—the first set of "Guidelines"—was issued. Evaluating the reasons for this abrupt change of policy, the Commission concluded:

> Further, it became obvious that the limited EEOP staff lacked the physical resources to negotiate on an individual basis with the hundreds of school districts expected to submit ... plans in time to commence meaningful desegregation in the Fall of 1965. 129/

128/ July 3 statement at 6.

128a/ See p. 9 above.

129 / *Southern School Desegregation*, 1966-67 at 10.

Emphasis upon individual negotiations, in the context of manpower as limited as HEW's is today, may be interpreted by some school districts as an invitation to delay. It is up to HEW to dispel such impressions by its future statements and by its actions.

VI. Federal Desegregation Efforts in the Summer of 1969

Since the July 3 statement, there has been a slackening of Federal efforts to desegregate elementary and secondary schools in the South. The July 3 joint statement declared that desegregation plans for Southern and Border State school districts:

> ... must provide for full compliance now -- that is, the "terminal date" must be the 1969-70 school year. 130/

Stating that some districts might require a "limited delay" in achieving full desegregation, the statement continued:

> In considering whether and how much additional time is justified, we will take into account only bona fide educational and administrative problems. Examples of such problems would be serious shortages of necessary physical facilities, financial resources or faculty. 131/

The Attorney General and the Secretary of Health, Education and Welfare then asserted that:

> Additional time will be allowed only where those requesting it sustain the heavy factual burden of proving that compliance with the 1969-70 time schedule cannot be achieved; where additional time is allowed, it will be the minimum shown to be necessary.

130/ July 3 statement at 8. The succeeding quotations of the statement are also from this page.

131/ It is ironic that these justifications for delay closely resemble the problems which the Supreme Court, fourteen years ago, said might justify delaying full compliance in the cases then before it:

> ... [T]he courts may consider problems related to administration, arising from the physical condition of the school plant, the school transportation system, personnel, revision of school districts and attendance areas into compact units to achieve a system of determining admission to the public schools on a nonracial basis ... .

Brown II, 349 U. S. 294, 300-01 (1955).

Freedom-of-choice would, continued the statement, be an acceptable means of desegregation only if the school district could:

> ... demonstrate, on the basis of its record, that ... the plan as a whole genuinely promises to achieve a complete end to racial discrimination at the earliest practicable date.

Since then, the Department of Justice and the Department of Health, Education, and Welfare have taken the following actions:

—— In Alabama, HEW and the Department of Justice have reportedly decided to treat a majority-black area of the Mobile school district as if it were administratively separate, and have recommended that complete desegregation of this area be postponed until the 1970-71 school year, while the rural and predominantly-white urban areas of the same school system were to be required to desegregate for the 1969-70 school year. The area "split off" by the Federal plan is in the eastern part of the urban portion of the Mobile school system, and approximately 85% of all black residents of the county live within it, according to the attorney for the private plaintiffs.132/

The plan was filed with the Federal district court for the Southern District of Alabama in July 1969. The court accepted the plan, with some modifications, on August 1.

Under the district court's order, high school students living within the majority-black area will continue to use a freedom-of-choice plan, but elementary students will be assigned to schools according to a racially gerrymandered zoning system the Fifth Circuit has already held to be unconstitutional. 133/ Even under the HEW plans for 1970-71, five large all-black elementary schools, with a total of almost 5,000 students, would continue to be all-black throughout the 1970-71 school year. The district court deferred action on the 1970-71 plans. Although black students would be bused to predominantly-white schools under the HEW plans for 1970-71, no white students would be bused to predominantly-black schools.

132/ This information was obtained in a telephone conversation with Michael Davidson, the attorney for the private plaintiffs, on September 8, 1969. This information has been in part confirmed and in part supplemented by the opinion of the district court on remand. Davis v. Board of School Commissioners of Mobile County, Civil Action No. 3003-63 (S.D. Ala., decided August 1, 1969).

133/ Davis, supra, ___F.2d___, docket no. 26886, decided June 3, 1969. The court of appeals had also forbidden the continued use of freedom-of-choice plans for high school students.

The private plaintiffs have appealed the district court's decision to the Fifth Circuit, asserting that the district court had violated the Fifth Circuit's mandate. The Department of Justice has opposed this appeal. 134/

— —In Mississippi, the Department of Health, Education, and Welfare, supported by the Justice Department, abandoned desegregation plans it had developed for 30 school districts and requested from the Fifth Circuit a year's delay in desegregating the schools of these districts. On July 3, 1969, the Fifth Circuit had ordered these school districts to cooperate with HEW in developing desegregation plans. 135/ The plans were to be submitted to the district court by August 11, the district court was to rule on the plan September 1, and the plan adopted by the district court was to be implemented in the 1969-70 school year. HEW's plans were submitted August 11.

134/ The Department of Justice has confirmed many of the above facts.

135/ United States v. Hinds County School Board, _______F.2d_______, docket no. 28030.

HEW's plans called for complete desegregation, including an end to the use of freedom-of-choice, in almost all of the 30 districts for the 1969-70 school year. On August 19, however, the Secretary of Health, Education, and Welfare wrote to the three district judges of the Southern District of Mississippi who were to have decided which plans to adopt, and to Judge Brown of the Court of Appeals. The letter requested that the plans HEW had already submitted to the district court be withdrawn from consideration, and that HEW be given until December to submit new plans.

The Justice Department then took the legal steps necessary to accomplish this delay. The district court recommended that HEW be given leave to withdraw its August 11 plans, and the Fifth Circuit granted the request on August 28, 1968.

Although the Secretary's letter stated that the major reasons for requesting that the August 11 plans be withdrawn were that "the time allowed for the development of these terminal plans has been much too short" to develop plans that could be implemented in the 1969-70 school year, and that implementation of the August 11 plans "must surely, in my judgment, produce chaos, confusion, and a catastrophic educational setback", 136/ the Fifth Circuit noted that the Government had proposed the timetable HEW had been asked to meet:

> Questions were specifically directed to the Assistant Attorney General appearing on behalf of the Government. Without qualification in response to precise inquiries he affirmed the Government's view that the timetable proposed by the Government was reasonable. And ... he affirmed that sufficient resources of the Executive Department would be made available to enable the Office of Education of the United States Department of Health, Education and Welfare to fulfill its role as specified in the order proposed by it 137/

The court further noted that:

> Likewise, until the motion of August 21, 1969, there has been no suggestion by the United States Attorney General that the times fixed by the Court should be relaxed or extended or that such timetable was unattainable. 138/

Although Secretary Finch's letter did not state that he intended the plans to be submitted in December to provide for some desegregation

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136/ The Fifth Circuit attached the text of the Secretary's letter to their August 28 opinion, as Exhibit 2. United States v. Hinds County School Board, __________ F.2d _________, docket nos. 28030 and 28042.

137/ Id., slip opinion at 5.

138/ Id., slip opinion at 6.

during the 1969-70 school year, the Fifth Circuit stated that it was "a condition of this extension of time" that the final plan, as approved, shall require "significant" desegregation during the 1969-70 school year. 139/

When HEW's plans were withdrawn, nothing filled their place. All of the districts affected will therefore continue using their old freedom-of-choice plans. At no time in the hearing on the Justice Department's motion for extension of time was any evidence presented that the continued use of freedom-of-choice would result in meaningful school desegregation during the 1969-70 school year.

As part of its August 11 plans, HEW had submitted alternative, two-year desegregation plans, to be used if the district court refused to order complete desegregation in the 1969-70 school year. Although many school boards objected in toto to the August 11 plans, some of them had, at an earlier stage of HEW's negotiations, offered to carry out as substantial steps as provided by the 1969-70 component of HEW's two-year plans. These districts could presumbably have been ordered to carry out substantial steps to desegregate during the 1969-70 school year without "chaos, confusion, and a catastrophic educational setback".

Still other districts had four or fewer schools, and could, quite possibly, have been ordered to desegregate completely in the 1969-70 school year without undue confusion.

Although the Fifth Circuit required that the districts take "significant action" to desegregate before the end of the 1969-70 school year, the courts have traditionally been reluctant to order far-reaching desegregation during the course of a school year. It is not, therefore, likely that meaningful desegregation will occur before the start of the 1970-71 school year. 140/

The private plaintiffs applied to Justice Black of the Supreme Court for a stay of the Fifth Circuit's decision. The stay was denied because Justice Black felt that he could not say definitely that the full Court would reverse the Fifth Circuit, although he thought that there was a "strong possibility" that it would. He invited the applicants to "present the issue to the full Court at the earliest possible opportunity." 141/

139/ Id., slip opinion at 10.

140/ The Solicitor General of the United States has reportedly conceded this point in proceedings involving a number of the Mississippi districts in the Supreme Court. See The Washington Post, September 4, 1969, at p. A 2.

The above facts have been obtained in telephone conversations with Reuben V. Anderson, Norman C. Amaker, and James M. Nabrit, the attorneys for the private plaintiffs, on August 29 and September 3 and 8, 1969. Many of these facts have been obtained from the Fifth Circuit's opinion in United States v. Hinds County School Board, supra note 139. Many, particularly as to chronology and procedures, have been confirmed by the Department of Justice.

141/ Alexander v. Holmes County Board of Education, _____ U. S. ____ decided September 5, 1969, slip opinion at 4.

In the course of his opinion, Justice Black stated that the phrase "all deliberate speed" had turned out to be "only a soft euphemism for delay." 142/ He continued:

> ... [T]here is no longer the slightest excuse, reason, or justification for further postponement of the time when every public school system in the United States will be a unitary one, receiving and teaching students without discrimination on the basis of their race or color. 143/

Stating that it was "deplorable" to him to uphold the order of the Fifth Circuit, Justice Black continued:

> This conclusion does not comport with my ideas of what ought to be done in this case when it comes before the entire Court. ... I would then hold that there are no longer any justiciable issues in the question of making effective not only promptly but at once — now — orders sufficient to vindicate the rights of any pupil in the United States who is effectively excluded from a public school because of his race or color. 144/

He concluded:

> It has been 15 years since we declared in the two Brown cases that a law which prevents a child from going to a public school because of his color violates the Equal Protection Clause. As this record conclusively shows, there are many places still in this country where the schools are either "white" or "Negro" and not just schools for all children as the Constitution requires. In my opinion there is no reason why such a wholesale deprivation [illegible] constitutional rights should be tolerated another mi[illegible]e. 145/

——In South Carolina, the Justice Department and HEW acquiesced in delaying for a year meaningful school desegregation in 21 school districts. On March 31, 1969, the Federal judges of South Carolina ordered all school districts which were desegregating under court orders in that State to cooperate with HEW in developing their school desegregation plans. When HEW submitted its

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142/ Id., slip opinion at 2.

143/ Id., slip opinion at 3.

144/ Id., slip opinion at 4-5.

145/ Id., slip opinion at 5.

plans to the district court, the original plans, as typewritten, had reportedly called for complete desegregation in the 1969-70 school year. In some of the plans, however, the typed date had been crossed out in ink, and a 1970-71 date had been penned in instead. Other plans were altered by typewriter. All of the Federal judges presiding over these cases acquiesced in the Federal suggestion that the terminal date for school desegregation be postponed to the 1970-71 school year. 146/

Most of the districts whose terminal dates for desegregation were postponed until the 1970-71 school year will continue to use freedom-of-choice plans. Generally, no evidence had been introduced in these cases that freedom-of-choice would be an effective means of school desegregation. 147/

——On August 1, 1969, the Department of Justice filed a statewide school desegregation suit in Georgia. 148/ Although 37 school districts are presently ineligible for Federal funds because of noncompliance with Title VI of the Civil Rights Act of 1964, 149/ their funds will be reinstated as soon as a final court order is entered. 150/

146/ In United States v. Allendale County School District, Civil Action No. 68-698, (D.S.C., decided July 22, 1969), for example, the court stated:

> I have had two conferences with attorneys for the Justice Department and representatives of the School District and their attorneys. At these conferences, the representative present from the Department of Health, Education and Welfare did not raise major objections to the 1969-70 plan of the District.

Slip opinion at 1.

In some other cases, the Government continued to press for complete desegregation in the 1969-70 school year. See United States v. School District No. 1, Dorchester County, Civil Action No. 68-697. (D.S.C. decided July 14, 1969).

147/ These facts are drawn from a telephone conversation with Mordecai C. Johnson, one of the attorneys for the private plaintiffs, on September 4, 1969, and from various news sources. See The New York Times, August 3, 1969, at p. 40 and The Washington Post, August 25, 1969, at p. A 2. Several recent court orders have been consulted for additional facts.

148/ The New York Times, August 2, 1969, at p. 1.

149/ U. S. Department of Health, Education, and Welfare, "Status of Title VI Compliance: Interagency Report", dated August 28, 1969.

150/ 42 U.S.C. sec. 2000d-5 (Supp., 1968).

Experience has shown that statewide court orders are not an effective means of desegregating schools. Statewide court orders insulate all districts across the State from direct administrative efforts to ensure their compliance with their plans, and possess all of the other disadvantages of court orders against individual school districts. The court which entered the statewide order in Alabama also enjoined HEW from taking any direct action when it found that a school district was not observing the terms of the court order. 151/ In addition, supervising the compliance of a great number of school districts is so great a burden on the time and resources of a single district court that it cannot be handled effectively.

On March 22, 1967, a statewide school desegregation order was entered in Alabama. 152/ In the 1968-69 school year, only 7.4% of the black students of Alabama attended desegregated schools. Only Mississippi had a lower percentage. 153/

Contemporaneously with these events, the Department of Justice has dealt firmly with resistance to school desegregation in a number of areas: 154/

——In Georgia, from midsummer to the present, 15 school districts which had given acceptable Title VI assurances to HEW have reneged on their promises to undertake meaningful action to desegregate, and have announced their intention not to comply with Title VI. The Department of Justice has instituted desegregation proceedings against eight of these districts, and is preparing to take legal action against the remaining seven. One temporary restraining order against a district has been obtained to date; hearings in six other cases have been set for September 11.

——In Mississippi and in Texas, similar proceedings have been brought against two districts — one in each State — which have reneged on their Title VI assurances given to HEW. A temporary restraining order has been obtained in Mississippi.

151/ See p. 39 above.

152/ See note 31 above.

153/ See p. 29 above.

154/ This information has been obtained from the Department of Justice.

——In Louisiana, white resistance to desegregation is presently high. Organized groups of whites have been formed to retard the pace of desegregation. Several of these groups have brought suit in State courts in the past month, to enjoin their school boards from opening the schools on a desegregated basis. Several suits have named the Secretary of Health, Education, and Welfare as a defendant because of HEW's role in developing desegregation plans for voluntary-plan districts and districts operating under court orders. The Department has been seeking orders from the Federal district courts to remove this litigation from the State courts to the Federal courts.

The Department has also obtained from the Federal district courts orders for school officials who had closed the public schools in three Louisiana parishes to show cause why they should not be cited for contempt of court. The Department has obtained the show-cause orders in all three cases, and has also obtained court orders directing that the schools be reopened on a desegregated basis.

——Also in Louisiana, the Department of Justice and HEW have pressed for complete desegregation in the 1969-70 school year for roughly 25 districts.

APPENDIX A

The following is a partial list of the major efforts of some State and local officials and governments in six Border and Southern States to block or to delay desegregation of elementary and secondary schools in the late 1950's and early 1960's. Such efforts include inaction or inadequate action in response to violence and terrorism.

Alabama....................................2

Arkansas...................................4

Florida....................................5

Georgia....................................7

Louisiana..................................9

Mississippi...............................14

Alabama

Governor George Wallace of Alabama, who also served as President of the Alabama State Board of Education, set the tone for his State in his 1963 inaugural address:

> I draw the line in the dust and toss the gauntlet before the feet of tyranny and I say segregation now, segregation tomorrow, segregation forever. 1/

In August of 1963, the Macon County Board of Education, acting under a court order, assigned 13 black pupils in grades eight through 12 to the Tuskegee Public High School, a white-attended 12-grade school. Governor Wallace then ordered the school closed for a week, and State troopers were posted at the school to prevent pupils and teachers from entering On September 9, he issued an Executive Order directing that "no student shall be permitted to integrate the public schools of the City of Tuskegee, Alabama." 2/ On the same day, State troopers acting under another of his Orders barred Negro students from attending white schools in Birmingham, and the Governor called out the National Guard to keep the schools segregated. 3/

In January, 1964, the State Board of Education ordered that Tuskegee High School be closed. One month later, it passed the following resolution:

> BE IT RESOLVED That the State Board of Education deplores the order of Judge Johnson and pledges every resource at our command to defend the people of our State against every order of the Federal court in attempting to integrate the public schools of this State and will use every legal means at our command to defeat said integration orders and pledges our full support to the local boards of education in

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1/ U. S. Commission on Civil Rights, Staff Report: Public Education, 1963 at 8.

2/ These events are recounted in United States v. Wallace, 222 F. Supp. 485 (M.D. Ala., 1963), decided by all Federal judges of the Northern, Middle, and Southern Districts of Alabama, and in Lee v. Macon County Board of Education, 267 F. Supp. 458, 462 (M.D. Ala., 1967) (three-judge court) aff'd sub nom Wallace v. United States, 389 U.S. 215 (1967).

3/ U. S. Commission on Civil Rights, Staff Report: Public Education, 1964 at 8-9. The next day, the President of the United States federalized the National Guard. Id. at 9.

> supporting the public school systems as now constituted with the law, and will give every assistance possible to support every effort to maintain our way of life and high educational standards for all citizens of our State. 4/

Later, school districts which signed desegregation agreements with HEW were intensely pressured by Governor Wallace and by the State Board of Education to retract their agreements. In some cases, the districts submitted. 5/

Evaluating these and other efforts of the Governor and of the State Board of Education, a three-judge Federal district court stated in March, 1967:

> Not only have these defendants, through their control and influence over the local school boards, flouted every effort to make the Fourteenth Amendment a meaningful reality to Negro school children in Alabama; they have apparently dedicated themselves and, certainly from the evidence in this case, have committed the powers and resources of their offices to the continuation of a dual public school system such as that condemned by Brown v. Board of Education ... . As a result of such efforts ... today only a very small percentage of students in Alabama are enrolled in desegregated school systems. 6/

During the Fall of 1963, white citizens in Birmingham, possibly encouraged by the disrespect for the rule of law demonstrated by State officials, engaged in an orgy of mob violence. On September 4, 1963, a 20-year-old black person was killed and an explosion damaged the home of a black attorney. From September 10 to September 14, white students and adults rioted as whites boycotted the desegregated schools. On September 15, a bomb exploded in a Negro church, killing four young black girls and injuring 23 others. On that same day, two white boys shot and killed a 13-year-old black boy, and a white policeman fatally shot a 16-year-old black boy who had allegedly been throwing rocks at cars. 7/

4/ 267 F.Supp. at 463-64.

5/ Id. at 466-68.

6/ Id. at 465 (footnote omitted).

7/ 1964 Staff Report, supra note 3, at 8-9.

Arkansas

On September 2, 1957, the day before the Little Rock public schools were to open, Governor Faubus dispatched troops of the Arkansas National Guard to Central High School to keep out Negro students. This was done, said the Governor, "to prevent violence". 8/ After a Federal court enjoined Arkansas officials from using the National Guard to bar Negro pupils from the white-attended school, mob violence increased until the Mayor of Little Rock requested Federal troops. These troops, and later the federalized National Guard, were used to maintain order for the rest of the year. 9/

At the beginning of the next school year, the Supreme Court decided that community hostility to desegregation was not a valid reason for delaying desegregation. 10/ Governor Faubus then ordered all four high schools in Little Rock closed, under authority granted by the Legislature in a special session. A referendum was held, and voters rejected, by over 2 to 1, a proposal to reopen the city's high schools on an integrated basis. 11/ The School Board then leased the high schools to a corporation which would have operated them as private schools, but the Eighth Circuit intervened and stopped the execution of this plan. 12/ The schools were closed for the remainder of the 1958-59 school year. 13/

Near the end of that school year, a rump session of the Little Rock School Board dismissed 44 teachers without charges or hearing because, as the President of the School Board explained, teachers who believed that the Supreme Court's Brown decision was the law of the land "have no place in our school system, however qualified professionally." 14/

In the beginning of the 1959-60 school year, repeated attempts were again made to arouse mob violence in protest at the opening of integrated

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8/ Report of the U.S. Commission on Civil Rights, 1959 at 196.

9/ Id.

10/ Cooper v. Aaron, 358 U.S. 1 (1958).

11/ 1959 Report at 198.

12/ Aaron v. Cooper, 261 F.2d 97 (1958).

13/ 1959 Report at 198-99. The school-closing law was held to be unconstitutional in Aaron v. McKinley, 173 F.Supp. 944 (E.D. Ark., 1959) aff'd per curiam sub nom Faubus v. Aaron, 361 U.S. 197 (1959).

14/ 1959 Report at 199.

high schools in Little Rock. The city police dispersed a mob of 200 which had marched to Central High School. 15/ The Chairman of the Commission's Arkansas State Advisory Committee testified in part:

> For resisting the mob's attack and maintaining law and order in Little Rock, the city police were bitterly denounced by Governor Faubus and by the capital citizens council 16/

This climate of public lawlessness, supported and encouraged by the highest officials of the State, seriously slowed the pace of desegregation in Arkansas. The Pine Bluff school district, for example, had announced in September, 1956, that it would voluntarily begin to desegregate in the 1957-58 school year. When the mob violence at Little Rock's Central High School broke out, however, the Pine Bluff school board postponed its plan to desegregate for an indefinite time. It did not begin to desegregate until September, 1963, seven years after its original announcement. 17/

Florida

Florida's initial response to the Supreme Court's decision in Brown took the form of several legislative attempts to preserve segregation. The Governor of the State of Florida appointed a Special Advisory Committee to recommend legislative action in response to the decision. Its report, issued on July 16, 1956, asserted that the school desegregation and other recent decisions "destroy constitutional government as conceived by our forefathers ... and in the aggregate constitute a usurpation of authority and a threat to constitutional government unparalleled in American History." 18/

15/ U.S. Commission on Civil Rights, 1961 Report: Education at 44.

16/ Id.

17/ U.S. Commission on Civil Rights, Staff Report: Public Education, 1964 at 41.

18/ The text of the report is printed in 1 Race Rel. L. Rep. 921, 922.

Following the recommendations of this Special Advisory Committee the Florida Legislature resolved in 1956 that the Supreme Court had usurped its authority and called for a constitutional amendment that would reserve control over educational activities to the States. 19/ The next year, the Legislature invoked the pre-Civil War concept that a State could interpose its authority between the Federal Government and the people of the State and thus render Federal acts null and void within a State. It declared:

> That said decisions and orders of the Supreme Court of the United States denying the individual sovereign states the power to enact laws relating to espionage or subversion, criminal proceedings, the dismissal of public employees for refusal to answer questions concerning their connections with communism, "right to work" protection, and relating to separation of the races in the public institutions of a State are null, void and of no force or effect. 20/

The Legislature then proposed a constitutional amendment to transform the United States Senate into "a court with final appellate jurisdiction" to review Supreme Court decisions where the States have any interest, direct or indirect, in the matter decided. 21/ Referring to the use of Federal troops in Arkansas, the Legislature then provided for the automatic closing of any school whenever troops under Federal command were used at or near the school to prevent violence "precipitated ... by the operation of said school or student or students attending such school ... ." 22/

In 1959, the Legislature passed a series of statutes authorizing the assignment of students to schools on the basis of intellectual ability, "any condition of socioeconomic class consciousness" and other factors; 23/ suspending the operation of Florida's compulsory-attendance law when for any child whose parents object that "the races are commingled" in the child's school; 24/ authorizing the establishment of private schools; 25/ and creating a Board of Private Education. 26/

19/ 1956 Special Session, Senate Concurrent Resolution No. 17-XX, 1 Race Rel. L. Rep. 948.

20/ 1957 Session, House Concurrent Resolution No. 174, 2 Race Rel. L. Rep. 707, 710.

21/ 1957 Session, Senate Concurrent Resolution No. 116, 2 Race Rel L. Rep. 711.

22/ 1957 Acts, ch. 1975, 2 Race Rel. L. Rep. 1149.

23/ 1959 Acts, ch. 59-428, 4 Race Rel. L. Rep. 751, 752.

24/ 1959 Acts, ch. 59-412, 4 Race Rel. L. Rep. 753, 754.

25/ 1959 Acts, ch. 59-113, 4 Race Rel. L. Rep. 762.

26/ 1959 Acts, ch. 59-471, 4 Race Rel. L. Rep. 755.

Georgia

In 1956, Georgia enacted an interposition resolution declaring that Supreme Court decisions "relating to separation of the races in the public institutions of a State ... are null, void and of no force or effect". 27/ The next year, the Legislature passed a resolution citing "the pattern of pro-communist and unconstitutional decisions" of the Supreme Court, including Brown in that pattern, and resolving:

> ... /T/hat the following named Justices of the Supreme Court of the United States are guilty of attempting to subvert the Constitution of the United States, and of high crimes and misdemeanors in office, and of giving aid or comfort to the enemies of the United States ... for which the General Assembly of the State of Georgia, in the performance of its high duty to preserve the republican union of republican states, does hereby impeach said Justices and demand their removal from office 28/

Other efforts of the Legislature included the following:

a) A declaration that the 14th and 15th Amendments were invalid; 29/

b) A proviso that only school districts which were completely segregated were entitled to State funds for education; 30/

c) A requirement that public schools be closed whenever they are not entitled to State funds. Under this Act, each child who would have attended the closed school was to receive an "educational grant" to be spent at a private, nonsectarian school; 31/

27/ 1956 Session, H.R. No. 185,1 Race Rel. L. Rep. 438, 440.

28/ 1957 Session, Res. Act No. 100, 2 Race Rel. L. Rep. 485, 486-87.

29/ 1957 Session, Res. Act No. 45, 2 Race. Rel. L. Rep. 483.

30/ 1956 Session, H. R. No. 423, 1 Race Rel. L. Rep. 421. This proviso applied even where a court order required desegregation.

31/ 1956 Session, Act. No. 11, 1 Race. Rel. L. Rep. 418. See note 30, supra.

d) Authorization for the leasing of public school facilities to the operators of private schools; 32/

e) Censure of President Eisenhower for using troops at Little Rock; 33/

f) A grant to the Governor of authority to close public schools and State colleges and universities when he finds that their operation would be likely to result in public disorder. 34/

This carries the list to February, 1959. Many other statutes have been passed, and invalidated by the courts, since that time. 35/

Meanwhile, other State authorities were not idle. The Georgia Board of Education, for one, forbade student groups in Georgia public schools to invite their members to attend integrated conferences, programs, and meetings. Students wishing to form new student groups were required to give pledges that they would observe this requirement. 36/

Presumably, the Georgia Legislature's "massive resistance" period, which ended in 1961 with repeal of many of the resistance statutes 37/ had some impact on the rate of desegregation. Prior to September, 1963, Atlanta was the only desegregated school district out of the 181 districts in Georgia having both white and black students. In Atlanta, a total of 153 black students attended school with whites in September 1963. 38/ Across the State, only 177 out of 337,534 black students were enrolled in desegregated schools. 39/

32/ 1956 Session, Act No. 13, 1 Race Rel. L. Rep. 420.

33/ 1958 Session, H. R. No. 305, 3 Race Rel. L. Rep. 357.

34/ 1959 Session, Act Nos. 7, 8, 4 Race Rel. L. Rep. 180, 181.

35/ See the various Reports of the U.S. Commission on Civil Rights for detailed chronicles of these statutes and of their reception by the courts.

36/ The text of the resolution, dated April 22, 1957, appears at 2 Race Rel. L. Rep. 715.

37/ 1961 Report: Education at 76-77. See also 1961 Session, Act No. 14, 6 Race Rel. L. Rep. 290.

38/ 1964 Staff Report at 76-77.

39/ *Id.* at 291.

Louisiana

Louisiana's response to Brown was quick. In 1954, the Legislature amended the State Constitution, which had formerly provided for school segregation on the basis of race, to substitute another ground for segregation of the races in the schools:

> ... This provision is made in the exercise of the state police power to promote and protect public health, morals, better education and the peace and good order in the State, and not because of race. ... 40/

In that year, the Legislature also provided that State funds for school lunch programs, free textbooks, school supplies, and other purposes would not be available for desegregated schools. 41/ A Joint Legislative Committee was established in 1954 to carry on "the fight to maintain segregation". 42/ Its life was extended by resolution in 1956, the resolution's preamble stating that desegregation was the result of a campaign "by enemies, both foreign and domestic", referred to the day of the Brown I decision as "Black Monday", and made an ominous reference to "the Party's most powerful weapon ... racial tension". 43/

A circus of legislation followed:

a) Passage of an interposition resolution; 44/

40/ Act 752 of 1954, amending sec. 1 of Article XII of the Constitution of Louisiana. 1 Race Rel. L. Rep. 239. See also 1959 Report at 236.

41/ Act 555 of 1954, 1 Race Rel. L. Rep. 239. Criminal penalties were included.

42/ H. Con. Res. No. 27 of 1954.

43/ H. Con. Res. No. 9 of 1956, 1 Race Rel. L. Rep. 755.

44/ H. Con. Res. No. 10 of 1956, 1 Race Rel. L. Rep. 753, 754. New and interesting constitutional theories were expressed. After stating that the Supreme Court had no authority to determine whether it had, by the Brown decision, usurped powers the Constitution had not given it, the Resolution continued:

> Therefore, the Legislature of Louisiana, appealing first to our Creator as the only Supreme Authority, next appeals to her sister States ...

b) After the entry of a court order requiring the Orleans Parish (New Orleans) School Board to desegregate, 45/ the Legislature granted itself the power to classify all New Orleans schools as exclusively for the use of white students or for the use of Negro students; 46/

c) Passage of legislation providing for the removal of any public school teacher or school bus operator in the State, and any employees of the school system in Orleans Parish, who advocate racial integration of the schools; 47/

d) Passage of a statute authorizing the Governor "to close any racially mixed public school or any public school which is subject to a court order requiring it to admit students of both the negro /sic/ and white races ... "; 48/

e) Passage of legislation authorizing the creation of "educational cooperatives" to provide private educational facilities and to borrow money from the State and from other sources to accomplish that purpose; 49/

f) Provision of a system of tuition grants for children attending non-sectarian private schools, where no racially segregated public school is available; 50/

45/ Bush v. Orleans Parish School Board, 138 F.Supp. 336 (E.D. La., 1956) (three-judge court), motion for leave to file petition for writ of mandamus denied, 351 U.S. 948 (1956); 138 F.Supp. 337 (1956), aff'd, 242 F.2d 156 (1957) cert. den., 354 U.S. 921 (1957).

46/ Senate Bill No. 350 of 1956, 1 Race Rel. L. Rep. 927.

47/ Act. Nos. 248, 249, 250, and 252 of 1956, 1 Race Rel. L. Rep. 941 et seq.

48/ Act No. 256 of 1958, 3 Race Rel. L. Rep. 778.

49/ Act.No. 257 of 1958, 3 Race Rel. L. Rep. 768.

50/ Act No. 258 of 1958, 3 Race Rel L. Rep. 1062.

> g) Provided that any person, firm or corporation which furnished school books or supplies without charge to any racially integrated school, public or private, or which assisted or recognized such a school, would have committed a misdemeanor and could be given a fine of any size, or imprisoned for any period; 51/
>
> h) Provided that the Legislature must approve any school desegregation plan before it would be effective; 52/
>
> i) Authorized the Governor to supersede school boards affected by desegregation decrees and take over the operation of the schools formerly subject to such boards; 53/
>
> j) Authorized the Governor to close all schools in the State, if necessary to preserve segregation. 54/

On August 27, 1960, a three-judge court declared a long series of the above and other statutes unconstitutional, and enjoined the Governor and the Attorney General of Louisiana, as well as several other officials, from acting under them. The court then cited Attorney General Gremillion of Louisiana for criminal contempt because of his alleged behavior in the courtroom. 55/

The New Orleans schools had been closed, and were scheduled to reopen on November 14, 1960. On November 8, 1960, the Legislature, in the First Extraordinary Session, suspended the powers of the Orleans Parish School Board and vested them in the Legislature. 56/ It also authorized the State police to perform duties imposed upon them by the Legislature. 57/

51/ Act No. 333 of 1960, 5 Race Rel. L. Rep. 857.

52/ Act No. 496 of 1960, 5 Race Rel. L. Rep. 862.

53/ *Id.*

54/ Act No. 495 of 1960, 5 Race Rel. L. Rep. 861.

55/ *Bush*, *supra*, 187 F. Supp. 42, *motion for stay denied*, 364 U. S. 803 (1960). See also 5 Race Rel. L. Rep. at 655 *et seq*.

56/ Act No. 17, 1st Extra. Sess. of 1960, 5 Race Rel. L. Rep. 1191.

57/ Act No. 16, 1st Extra. Sess. of 1960, 5 Race Rel. L. Rep. 1190.

On November 12, the State Superintendent of Education declared November 14 to be a public school holiday. On November 13, the Legislature declared November 14 to be a public school holiday, and dispatched a force of State police, acting as sergeants-at-arms of the Legislature, to bar desegregation. 58/ The Federal district court then placed the entire membership of the Legislature, the Governor, Attorney General, State Treasurer, State Superintendent of Public Education, the members of the State Board of Education and various others under a temporary order restraining them from interfering with the operations of the Orleans Parish schools by declaring November 14 to be a holiday and by other means. 59/

The next day, November 14, the Legislature retroactively removed from office four members of the Orleans Parish School Board who had continued to function after entry of a Federal desegregation order despite the statutes discussed above. 60/ At 10:00 P.M. that night, the Federal district court entered a temporary order restraining essentially the same set of officials from carrying out this act. 61/

On November 14, 1960, four 6-year-old Negro girls went to two previously all-white elementary schools. White students then boycotted the schools, white high school students rioted and burned an American flag, and mobs of screaming women appeared at the two schools. The boycot continued, with varying effectiveness, for the rest of the year. 62/

On November 30, 1960, the three-judge court in Bush declared 18 statutes and 5 concurrent resolutions enacted during the First Extraordinary Session unconstitutional and enjoined their enforcement, stating that:

> However ingeniously worded some of the statutes may be admittedly the sole object of every measure adopted at the recent special session of the Louisiana Legislature is to preserve a system of segregated public schools in defiance of the mandate of the Supreme Court in Brown and the orders of this court in Bush. 63/

58/ H. Con. Res. No. 19, 1st Extra. Sess. of 1960, 5 Race Rel. L. Rep. 1209. See also U.S. Commission on Civil Rights, 1961 Report: Education at 41-42.

59/ Bush, supra, 5 Race Rel. L. Rep. 1005.

60/ H. Con. Res. No. 23, 1st Extra. Sess. of 1960, 5 Race. Rel. L. Rep. 1213.

61/ 5 Race Rel. L. Rep. 1006.

62/ 1961 Report: Education at 41-42.

63/ Bush, supra, 188 F.Supp. 916, 927. Twelve days later, the Supreme Court denied defendants' motions for a stay of the district court's order. 364 U.S. 500 (per curiam), aff'd 365 U.S. 569.

After its November 14 setback, the Legislature held a Second Extraordinary Session. Others followed, for a total of one regular session and five Extraordinary Sessions between May 1960 and February 1961. The Commission stated in 1961:

> Louisiana's resistance has been called by its attorney general the "legislate and litigate" technique. As fast as the Federal court enjoined enforcement of acts and resolutions, the legislature passed new ones. 64/

The three-judge court, faced on March 31, 1961 with measures enacted during the Third Extraordinary Session, evaluated them tersely:

> Once again, irresponsible conduct on the part of some Louisiana officials compels us to the unpleasant but necessary task of issuing further injunctions. ... /W/e are told that the new legislation is pointless, or, at most, constitutes an innocent domestic announcement.

To this, the court responded:

> Certainly Louisiana's legislators cannot seriously have expected us to condone new devices for re-establishing an unjust racial discrimination ... These are not the first blooms of a new spring. This litigation is now in its ninth year and the record is a chronology of delay, evasion, obstruction, defiance and reprisal. 65/

Other laws were passed, and other orders entered by the court. Although the defiance of the officials of Louisiana seemed to have been curbed in the end, by the courts, this resistance, as a practical matter, may well have been effective. In the fall of 1968, less than one out of every 11 black students in Louisiana was enrolled in a desegregated school. 66/

64/ *1961 Report: Education* at 73.

65/ *Bush*, 191 F. Supp. 871, 872-73. *aff'd sub nom.* *Denny* v. *Bush*, 367 U.S. 908 (1961).

66/ HEW release dated January 16, 1969. There were 299,152 black students in Louisiana, and only 26,354 of them were in desegregated schools.

Mississippi

On February 29, 1956, the State of Mississippi adopted an interposition resolution which announced:

> ...[W]e do hereby declare the decisions and order of the Supreme Court of the United States of May 17, 1954, and May 31, 1955, to be a usurpation of power reserved to the several states and do declare, as a matter of right, that said decisions are in violation of the Constitutions of the United States and the State of Mississippi, and therefore, are considered unconstitutional, invalid and of no lawful effect within the confines of the State of Mississippi 67/

The Legislature then:

> a) Ordered the Governor, the Lieutenant Governor, the heads of State departments, sheriffs, boards of supervisors, mayors, city governing boards, policemen, boards of education, and all other executive officials across the State to comply with the interposition resolution and "directed and required" them "to prohibit, by any lawful, peaceful and constitutional means, the implementation of or the compliance with the Integration Decisions of the United States Supreme Court ... ." 68/
>
> b) Authorized the Governor to close any public schools when this is in the best interest of the children or of the institution, or when this will "preserve the public peace, order, or tranquility." 69/

In 1960, Governor Ross R. Barnett stated: "Regardless, our schools at all levels must be kept segregated at all costs." 70/ The Legislature responded by giving the trustees of local school districts power to close any or all schools within their jurisdiction, 71/ and by attempting to require the approval of a local chancery court before parents or guardians would be allowed to file any suit on behalf of a child. 72/

67/ S. Con. Res. No. 125 of the 1956 Regular Session, 1 Race Rel. L. Rep. 440,442.

68/ 1956 Laws, ch. 254, 2 Race Rel. L. Rep. 480.

69/ S. Bill 2079 of the 1958 Session, 3 Race Rel. L. Rep. 553.

70/ 1961 Report: Education at 58.

71/ Miss. Laws 1960, ch. 316, p. 462.

72/ Miss. Laws 1960, ch. 215, p. 329.

The State of Mississippi's greatest efforts to avoid integration took place, not in a fight to keep black children away from white-attended elementary and secondary schools, but in a fight to keep a black college student from attending the University of Mississippi. On February 1, 1961, James Meredith applied for admission to the University of Mississippi, requesting to begin classes in the 1961 spring session. On February 4, 1961, his application was denied, the Registrar maintaining that Meredith's race "had nothing in the world to do with the action of the Registrar in denying his application." 73/

On May 31, Meredith sued University and State officials to enjoin them from denying his admittance to the University because of his race. The defendants claimed, in the district court and in the Fifth Circuit, that Mississippi did not have a policy of segregation in its institutions of higher learning:

> The appellees' chief counsel insists, for example, that appellant's counsel should have examined the genealogical records of all the students and alumni of the University and should have offered these records in evidence in order to prove the University's alleged policy of restricting admissions to white students. 74/

Although the Fifth Circuit had taken judicial notice of the State's policy of segregation in its schools and colleges,75/ the district court later found that there was not, at the time of Meredith's application, any custom or policy of excluding qualified Negroes:

> The proof in the instant case on this hearing fails to show that the application of any Negro or Chinaman or anyone of any other race has been rejected because of his race or color. 76/

73/ Meredith v. Fair, 199 F. Supp. 754, 757 (S.D. Miss. 1961). The other facts stated have been taken from the court's opinion in this proceeding.

74/ On appeal, 298 F.2d 696,701 (5th Cir., 1962).

75/ Id.

76/ On remand, 202 F.Supp. 224, 227 (1962).

The Fifth Circuit reversed the district court. Overriding other contentions of the defendants,77/ on June 25, 1962, the Court of Appeals ordered the district court to grant the injunction sought by Meredith. 78/

On September 4, 1962, the Board of Trustees of State Institutions of Higher Learning acted to deprive the officials of the University of Mississippi of all power to admit Meredith as a student, and vested the power in itself. 79/ On September 10, Justice Black denied a stay of the Fifth Circuit's order. 80/ On September 13, the district court enjoined the members of the Board of Trustees and various University officials from denying admittance to Meredith. 81/

On that day, Ross R. Barnett, the Governor of Mississippi, issued a proclamation interposing the sovereignty of the State between the Federal Government and the people, and ordering State officials to enforce Mississippi laws—which required segregation—"regardless of this unwarranted, illegal and arbitrary usurpation of power." 82/ Six days later, a State chancery court enjoined the Board of Trustees, University officials, the Attorney General, representatives of the Department of Justice and of the Federal Bureau of Investigation, U. S. Marshals and others:

> ... from doing anything or performing any act, the execution of which is intended to enroll and register the Negro, James Meredith as a student in the University of Mississippi; or do any other thing contrary to the laws and the statutes of the State of Mississippi which would aid or abet the integration of any university, college or common school within the State of Mississippi. 83/

77/ One of the defendants' more interesting contentions was that Meredith was properly denied admission because he was a bad character risk. Several grounds were cited, among them "that one of the reasons for rejecting the application was that 'all letters received by [the Registrar] from plaintiff were sent registered mail return receipt requested'." 305 F. 2d 343,359 (1962) (Bracketed material inserted by the court).

78/ 305 F.2d 343, cert. den., 371 U.S. 828 (1962).

79/ The text of the resolution is reprinted at 7 Race Rel. L. Rep. 745. The Legislature had authorized this action earlier in the year. H.B. No. 403 of the 1962 Session, approved May 21, 1962, 7 Race Rel. L. Rep. 1250.

80/ 7 Race Rel. L. Rep. 745.

81/ 7 Race Rel. L. Rep. 746.

82/ The text of the proclamation is reprinted at 7 Race Rel. L. Rep. 748.

83/ Meadors v. Meredith, 7 Race Rel. L. Rep. 749.

September 20, the next day, was a busy day. The Mississippi Legislature enacted a statute, providing that persons convicted of any criminal offense, who had not been pardoned, were ineligible to attend any institutions of higher learning in the State. Anyone who attempted to enroll despite such a conviction, and anyone who assisted him, would be punished by up to a year's imprisonment. 84/ The district court found that Meredith had been convicted that day on a charge the Fifth Circuit had earlier characterized as "frivolous," 85/ and enjoined Meredith's arrest. 86/ The Fifth Circuit enjoined State officials from enforcing the statute passed earlier in the day, from complying with the September 19 injunction of the State chancery court, and from arresting Meredith. At 3:00 P.M. that same day, the Board of Trustees appointed Governor Barnett as its agent, to exercise its power and authority in regard to Meredith's admission. 87/

On September 24, Governor Barnett issued a proclamation directing that:

> ... /R/epresentatives of said federal government are to be summarily arrested and jailed [for] illegal acts in violation of this executive order and in violation of the laws of the state of Mississippi. 88/

The Court of Appeals then ordered the Board of Trustees to undo the actions mentioned above,89/ and the Board complied the next day. 90/ At 8:30 A.M. on September 25, the court entered a temporary restraining order against Governor Barnett, the State Attorney General, the State Commissioner of Public Safety, all sheriffs, all district attorneys, all constables, all chiefs of police, and all town officials in the State. These defendants were ordered to refrain from taking any action, in any form, to penalize Meredith for seeking to enroll at the University, from interfering with the implementation of the orders of the district court and of the court of appeals, and from interfering with Federal officers or agents in carrying out their duties under those orders. 91/

84/ S. Bill No. 1501, First Extra Session of 1962, 7 Race Rel. L. Rep. 750. The measure was approved Sept. 20, 1962.

85/ 305 F.2d 343, 355 (1962).

86/ 7 Race Rel. L. Rep. 750.

87/ The text of the resolution is reprinted at 7 Race Rel. L. Rep. 753.

88/ The text of the proclamation is reprinted at 7 Race Rel. L. Rep. 754, 755.

89/ 7 Race Rel. L. Rep. 755, Sept. 24, 1962.

90/ The resolution is reprinted at 7 Race Rel. L. Rep. 758, Sept. 25, 1962.

91/ 7 Race Rel. L. Rep. 756.

Later that day, Governor Barnett issued another proclamation, addressed to Meredith, which referred to his September 14 proclamation interposing the authority of the State between the Federal Government and the people of the State, and:

> ... in order to prevent violence and a breach of the peace, and in order to preserve the peace, dignity and tranquility of the state of Mississippi, ... do hereby finally deny you admission to the University of Mississippi. 92/

Later that same night, the Court of Appeals issued an order to show cause why the Governor should not be cited for civil contempt of court for having wilfully interfered with Meredith's right to register at the University. 93/ A similar order was issued against the Lieutenant Governor, Paul B. Johnson, Jr., the next day. 94/ Governor Barnett was convicted of civil contempt of court on September 28,95/ and Lieutenant Governor Johnson was convicted on September 29. 96/

On September 30, the President of the United States proclaimed that:

> ... the Governor of the State of Mississippi and certain law enforcement officers and other officials of that State, and other persons, individually and in unlawful assemblies, combinations and conspiracies, have been and are wilfully opposing and obstructing the enforcement of orders entered by the United States District Court ... and the United States Court of Appeals 97/

The proclamation stated that he had called the Governor's attention "to the perilous situation that exists and to his duties in the premises" but had not received adequate assurances "that law and order will be maintained." It commanded all persons engaged in such obstructions of justice to end their activities. The mobs at the University of Mississippi failed to disperse and State and local officials failed to take action. Finding that his proclamation had

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92/ The text of the proclamation is reprinted at 7 Race Rel. L. Rep. 759.

93/ 7 Race Rel. L. Rep. 759.

94/ 7 Race Rel. L. Rep. 760.

95/ Meredith v. Fair, 313 F.2d 532 (1962).

96/ Meredith v. Fair, 313 F.2d 534. A motion to dismiss the contempt proceeding was denied October 19. 328 F.2d 586.

97/ The text is reprinted at 7 Race Rel. L. Rep. 764.

not been obeyed, the President later that day issued an Executive Order authorizing the Secretary of Defense to take all appropriate steps, including the use of troops if necessary, to remove the obstructions of justice and enforce the orders of the courts. 98/ Troops of the Army and of the Air Force were necessary to restore order.

The Court of Appeals, sitting en banc, later directed the Attorney General of the United States to institute criminal contempt proceedings against Governor Barnett and Lieutenant Governor Johnson. 99/

98/ Id. The State of Mississippi later submitted claims for $104,544.90 for damages allegedly arising from the use of troops, but the Comptroller General disallowed the claims. Comptroller General Opinion No. B-149993, May 1, 1964, reprinted at 9 Race Rel. L. Rep. 1008.

99/ 7 Race Rel. L. Rep. 1109 (Nov. 15, 1962), quoted verbatim in United States v. Barnett, 330 F.2d 369, 381 (5th Cir. 1963).

APPENDIX B

The following is a complete list of school desegregation complaints received by the U.S. Commission on Civil Rights from June 1, 1967, through June 15, 1969.

Almost all of these complaints have been referred to the Office for Civil Rights in the Department of Health, Education, and Welfare, or to the Department of Justice. The Commission has frequently been informed by that Office or by the Department that investigations were being undertaken; on very few of them, however, has the Commission been informed of any substantive action taken in response.

Unless the Commission is engaged in a study, or is preparing a hearing in the area, which involves the subject matter of such complaints, its limited resources normally make independent investigation impossible. Because the agencies concerned have authority to enforce Title VI of the Civil Rights Act of 1964 with, respect to the programs they administer, the Commission refers such complaints to the agencies concerned and attempts, frequently unsuccessfully, to obtain a substantive response.

All statements contained in these lists are the allegations of the complainants. None of them represent Commission factfindings.

Categories of Complaints Received

Segregated Schools.......................... 2

Harassment of Minority Children Attending Formerly All-White Schools....... 5

Minority Employment in Schools............. 8

Segregated School Activities...............14

Miscellaneous..............................15

SEGREGATED SCHOOLS

Freeport, Ill. Received 5/29/69 (7787)
New school built to perpetuate segregation.
Referred to HEW; no response.

Lake City & Ft. White, Fla. Received 12/3/68 (7523)
The school buses are segregated.
Referred to HEW; no response.

Augusta, Ga. Received 10/18/68 (7479)
Inequality of supplies in white and Negro schools of the Augusta Area Technical School.
Referred to HEW; no response.

Pageland, S.C. Received 9/18/68 (7439)
School District No. 4 is refusing to comply with parts of HEW approved desegregation plan.
Referred to HEW; no response.

Aberdeen, Miss. Received 9/12/68 (7430)
Aberdeen Municipal Separate School District is exercising illegal freedom of choice plan.
CCR received copy of complaint sent to HEW.

Tensas Parish, La. Received 7/19/68 (7348)
Schools are still segregated.
Referred to HEW; no response.

Somerville, Tenn. Received 7/11/68 (7340)
Schools are still segregated.
Referred to HEW; no response.

Southampton County, Va. Received 7/11/68 (7338)
Schools are segregated.
Referred to Department of Justice; received acknowledgment, no substantive response.

Chicago, Ill. Received 7/1/68 (7319)
Board of Education — planning to build high school which will perpetuate segregation.
Referred to HEW; no response.

Murphysboro, Ill. Received 6/27/68 (7314)
School District #186 practicing discrimination in placement of students.
Referred to Department of Justice; received acknowledgment, no substantive response.

Idabell, Okla. Received 1/29/68 (7269)
Racial discrimination in the inadequate Negro schools in Idabel, Okla., area.
Referred to HEW; received acknowledgment, no substantive response.

Pine Bluff, Ark. Received 5/20/68 (7235)
Negro teachers in formerly all-white school not allowed to attend faculty meetings at Watson Chapel School.
Referred to HEW; no response.

East Chicago, Ind. Received 4/4/68 (7170)
East Chicago School Board has plan for construction of school which would result in *de facto* segregation, NAACP unable to get information on status of school plans.
Referred to HEW; no response.

La Porte, Ind. Received 2/15/68 (7096)
La Porte School Administration forcing Negro children to attend New Prairie School although they are residents of La Porte.
Referred to HEW; HEW found no evidence of violation.

Okla. Received 12/6/67 (7055)
Oklahoma State Board of Education has made no attempt to ensure that local districts desegregate; operates racially segregated schools; acted to avoid integration; failure to amend desegregation policies in effect from 6-55.
CCR received copy of complaint sent to HEW and Department of Justice.

Lancaster, South Carolina Received 12/7/67 (7053)
Schools are still segregated in Lancaster School District. Negroes transported past white schools to Negro schools
Referred to HEW; no response.

Southern, Texas Received 9/28/67 (6987)
Southern, Texas, School Board continuing to discriminate against migrant children of Mexican descent
Referred to Department of Justice and HEW; received acknowledgments, no substantive responses.

Andalusia, Ala. Received 8/31/67 (6964)
Andalusia City School System & Covington County School are not complying with HEW guidelines & U.S. District Court Order.

Marianna, Ark. Received 8/8/67 (6945)
Marianna School Board District consolidated, whites with one, Negroes with Marianna, although Negro majority was not in favor, to avoid integration. See also #6874 and #6879.
Referred to HEW; acknowledgment, no substantive response.

Marvell, Ark. Received 7/10/67 (6919)
All-Negro school is not up to standard; children get inferior education; Board plans additions to school rather than integrating students.
Referred to HEW; and Department of Justice since school District already under Federal court order; no response from Justice.

Corpus Christi, Texas Received 7/24/67 (6908)
In the Corpus Christi Independent School District, boundaries for Moody Senior High School have been set to segregate Negro & Latin students.
Referred to HEW; responded that they would investigate, no further response.

Corona, California Received 7/18/67 (6905)
In the Corona Unified School District there is de facto segregation at Lincoln & Kimbel Elementary schools based on nationality.
Referred to HEW; no response.

Muscle Shoals, Ala. Received 7/3/67 (6887)
Previously all-Negro school still 80% Negro.
Referred to OEO and HEW; no response.

Moro, Ark. Received 6/20/67 (6879)
In Moro School District B, Negro students go to all-Negro school; whites transferred out of District to Monroe County; consolidation with Marianna School District (Lee) planned; whites & Negroes given entirely different information on proposed consolidation (see also #6874 and #6945).
Referred to HEW; no response.

Marianna, Ark. Received 6/14/67 (6874)
Marianna School Board has building plans which will perpetuate segregation (see also #6879 and #6945).
Referred to HEW; no response.

Durham, N.C. Received 6/12/67 (6873)
Residents of area annexed to Durham city petitioned to be included in Durham City School Dist.; Durham City Board of Education approved request; Durham County Board of Education has deliberately delayed necessary steps to allow children in district to attend Durham City Schools. This action was taken because of their race.
Complainant referred by HEW to attorney who is acting for plaintiffs while a school district desegregates under court order.

(Henry), Ala. Received 6/5/67 (6852)
Henry County Board of Education is not following court ordered desegregation plan; Board may have misused Title I fun[illegible]ut-off of Federal funds effective.
CCR received copy of complaint.

HARASSMENT OF MINORITY CHILDREN ATTENDING FORMERLY ALL-WHITE SCHOOLS

Brownfiled, Texas Received 6/6/69 (7784)
Negroes and Mexican Americans not allowed to eat if they can't pay. Negro child with broken wrist not given medical attention for two days. Referred to HEW and Department of Justice.

Wilmington, North Carolina Received 4/28/69 (7734)
Negro child unjustly expelled from school for fighting.
Referred to HEW; no response.

Three Rivers, Texas Received 5/6/69 (7731)
Teacher's aid punished children by taping their mouths.
Referred to local authorities.

Wallace, North Carolina Received 11/29/68 (7525)
Harassment of Negro students attending formerly all-white East Duplin High School at school and on bus, principal unwilling to act.
Referred to HEW; also private action taken, Newberne v. Duplin County Board of Education, by parents; no response from HEW.

Leland, Mississippi Received 12/11/68 (7530)
Negro children who transferred to formerly all-white school all given failing grades.
Freedom of choice forms "lost".

Sardis, Mississippi Received 5/29/68 (7261)
Harassment and intimidation of Negroes attending desegregated schools by teachers and fellow students.
Referred to HEW and Justice Department; no response from either.

Sierra Blanca, Texas Received 5/6/68 (7222)
Two children whipped.
Referred to HEW. HEW responded that remedial action was taken.

Colorado Springs, Colo. Received 4/25/68 (7210)
Discrimination by students at Air Academy High School because of Mexican name.
Referred to HEW; HEW referred to Justice Dept. No reply from Justice Dept.

Wheatley, Arkansas Received 4/16/68 (7186)

Negro children at Wheatley Public School do not receive textbooks, white children do; girls are given key to restroom which is kept locked, Negro girls forced to use outside facility.

Referred to HEW; acknowledgment; no substantive response.

Memphis, Tennessee Received 3/12/68 (7141)

Suspended for offenses for which white students were suspended at Humes Junior High School.

Referred to HEW; no response.

St. Stephens, Alabama Received 2/29/68 (7135)

Discrimination against Leroy High School Negro students, especially on school buses, officials have taken no action.

Referred to HEW; no substantive response.

Gulfport, Mississippi Received 12/15/67 (7062)

Negro students integrating West Junior High School refused to pick up paper when girl said "pick it up nigger"; suspended for allegedly pinching girl's parents refused to sign complaint; arrested while suspended for not attending school; sent to Oakley Training School for Boys at Raymond, Miss., without opportunity to testify for self or without benefit of counsel.

Referred to HEW and Justice Dept.; no substantive response.

Clinton (Laurena), South Carolina Received 11/27/67 (7044)

Junior high school principal expelled Negro student for allegedly telling white children he was going to marry white girl and have children by her; boy is 12, in 7th grade; boy denied any such statements.

Referred to HEW. HEW responded that case had been dropped by parents.

Sharkey-Issaquena, Miss. Received 11/14/67 (7038)

Sharkey-Issaquena Consolidated Line School District operating discriminatory commodity distribution, Negro schools get bad food; white good; Negro schools have poorer quality lunches; segregated lunch rooms; students under 14 employed in lunchrooms, Negroes do not receive same benefits from such employment as whites.

Referred to Agriculture Department; no substantive response.

Clovis (Curry), New Mexico Received 8/21/67 (6959)
Marshall Junior High School teacher and principal call Negro students "nigger"; Negro girls who fought with whites jailed, whites free, no discipline.
Referred to EEOC and HEW. No substantive response from EEOC. HEW replied that matter was under investigation; no further report received.

Los Angeles (Los Angeles), California Received 7/20/67 (6911)
Spanish American child kept out of school by Los Angeles City School System for 3 weeks after 3 day illness.
Referred to HEW; no response.

Montgomery (Montgomery), Ala. Received 7/10/67 (6899)
Got in argument with white boys on way to previously all-white Sidney Lanier High School, got hit by boy, was expelled for fighting, but they did nothing to whites.
Referred to Justice Department; no response.

Lancaster (Lancaster) S.C. Received 12/7/67 (7053)
Harassment and intimidation (including cut-off from Welfare for six months) to get Negro parents to withdraw children from white schools in Lancaster School District.
Referred to HEW; no response.

Aberdeen, Mississippi Received 9/12/68 (7430)
White teachers harassing Negro students in Aberdeen Municipal Separate School District.
Referred to HEW; no response.

Barnwell, South Carolina Received 1/8/68 (7077)
Negroes called names, no action taken; not called on in English and Shorthand classes at Barnwell High School.
Complainant referred to HEW; we learned action being taken from OCR.

MINORITY EMPLOYMENT IN SCHOOLS

Memphis, Tenn. Received 5/19/69 (7766)
Memphis State University fired employee because of race
Referred to HEW; no response.

Memphis, Tenn. Received 5/12/69 (7754)
Negro teacher not hired by City Board of Education because of race
Referred to HEW; no response.

Shelby County, Tenn. Received 5/5/69 (7748)
Board of Education failed to offer contract to Negro teacher in annexed area.
Referred to HEW; no response.

Memphis, Tenn. Received 5/5/69 (7747)
Teacher's contract not renewed at Raines Haven Elementary School because of race
Referred to HEW; no response.

Grambling, La. Received 4/28/69 (7735)
Contract with Gambling College not renewed because of expressed sympathy with Black demonstrators.
Referred to HEW; no response.

New York, N. Y. (7695)
Board of Education practices discrimination in hiring
Referred to HEW; no response.

Lawton, Oklahoma Received 2/27/69 (7620)
Three Negro teachers at Lawton High School replaced by whites or forced to resign because of demotions.
Referred to HEW; no response.

Lebanon, Tenn. Received 2/13/69 (7598)
Teacher's aide at Lebanon High School fired as a result of son's refusal to play certain songs (i.e. "Dixie") with the school band. Tenn. Department of Education to investigate. We requested copy from them. No response.

Gould, Ark. Received 2/10/69 (7592)
Cafeteria manager fired because she was a Negro.
Referred to HEW; no response.

Hyde County, N. W. Received 1/9/69 (7566)
Lunchroom worker fired due to refusal to help stop school boycott of O. A. Peay School.
Referred to HEW & Justice; no response from either.

Fort Pierce, Fla. Received 1/10/69 (7558)
Maternity leave not granted for Negro, always granted for white employees of Indian River Junior College.
Referred to HEW; no substantive response.

New Boston, Texas Received 11/25/68 (7515)
School faculty segregated
Referred to HEW; no response.

Aberdeen, Miss. Received 9/12/68 (7430)
Insufficient faculty desegregation in Aberdeen Municipal Separate School District.
Referred to HEW; no response.

Ashland City, Tenn. Received 8/16/68 (7396)
Discriminatory firing of bus driver; discrimination in hiring of teachers.
CCR received copy of complaint to HEW.

Mobile, Ala. Received 7/25/68 (7353)
Discrimination in hiring of teacher.
Referred to HEW; no response.

Murphysboro, Ill. Received 6/27/68 (7314)
Discrimination in hiring of teachers in School District #186.
Referred to HEW and Justice; no substantive response.

Waycross, Ga. Received 6/21/68 (7300)
Negro teacher fired while white teachers of the same subject being hired.
USCCR received copy of complaint to HEW.

Edenton, N. D. Received 5/5/68 (7275)
White man who is less qualified than black applicants was appointed principal of Walker High School.
Referred to HEW; no response.

Idabel, Okla. Received 6/4/68 (7269)
Two competant Negro teachers fired because of combination of white and Negro schools, district hiring white teachers.
Referred to HEW; no substantive response.

Tallulah, La. Received 5/27/68 (7252)
Negro teacher fired because of incident on field trip involving race; no Negro teachers in previously all-white elementary school.
USCCR received copy of complaint to HEW.

Battle Creek, Mich. Received 5/24/68 (7250)
Qualified Negro teachers not employed at Battle Creek City School
Referred to HEW, HEW replied that problem referred to Justice.
No response from Justice.

Minot, North Dakota Received 5/21/68 (7240)
Superintendent gave Negro teacher an unjustifiably poor recommendation to penalize her for having complained about racist remarks made to her daughter by her daughter's white teacher in another school in the same school system.
CCR received copy of complaint to NAACP and American Federation of Teachers.

Pine Bluff, Ark. Received 5/20/68 (7235)
Negro teachers in formerly all-white school not allowed to attend faculty meetings; Negro teachers not given full status, serve as aides; Negro teachers paid less than white teachers in the Watson Chapel School District.
Complainant referred to HEW; no response.

Ellettsville, Ind. Received 5/15/68 (7230)
Teacher fired by Richland-Bean Blossom School Corp. because of endorsement of integration.
Referred to HEW; received acknowledgement, no substantive response.

Santa Ana, Calif. Received 5/1/68 (7211)
Discriminatory employment practices regarding Mexican American teachers in Santa Ana Unified School District.
Referred to HEW; no response.

Milford, Texas Received 4/17/68 (7191)
When schools are desegregated unqualified white teachers are retained and qualified Negro teachers are not.
Referred to HEW; received acknowledgement, no substantive response.

Graham, N. C. Received 3/19/68 (7150)
General discourtesy toward Negro by fellow employees, fired for no just cause by Alamance County Schools.
referred to HEW; received acknowledgement, no substantive response.

Jackson, Miss. Received 3/12/68 (7143)
Not employed by University Medical Center, Hinds General Hospital, or Jackson V.A. Hospital because she is a Negro.
VA made inquiry and took affirmative steps.

DeKalb, Texas Received 2/15/68 (7118)
Fired from teaching position with DeKalb School System.
Referred to HEW; no response.

Frederick, Okla. Received 1/16/68 (7086)
Frederick Public School System ESEA Title I funds finance program with segregated teacher aides; 2 Negro aides; 16 white aides; Negroes serve at Negro school.
Referred to HEW; HEW responded they have no jurisdiction.

Memphis, Tenn. Received 10/24/67 (7056)
Trainees (Negro) told by Memphis Board of Education that there were no openings although white girls have been constantly hired in all departments; whites have same or less training.
Referred to HEW and Department of Labor; HEW responded that they have no jurisdiction; Labor found they had been employed and closed the file.

Oklahoma (Statewide) Received 12/6/67 (7055)
Racially discriminatory employment practices; segregated staffing by Oklahoma State Board of Education; don't advertise job openings in papers with Negro readers.
CCR received copy of complaint to HEW.

Lancaster, S. C. Received 12/7/67 (7053)
No white teachers at Negro schools in Lancaster School District; vocational school may lose funds because of non-compliance; no Negro representatives on City or County Boards of Education.
Referred to HEW; no response.

(Sharkey-Issaquena), Miss. Received 11/14/67 (7038)
Students under 14 employed in lunchrooms; Negroes do not receive same benefits from such employment as whites in Sharkey-Issaquena Consolidated Line School District.
Referred to HEW and Agriculture; no response from HEW; Agriculture conducting review, no further report.

Corpus Christi, Texas Received 11/7/67 (7031)
West Oso School District officers told aide she would be employed as higher salaried Para Professional; then told she would not be hired; when she complained, she was given opening but at Aide salary; opposed consolidation of West Oso and Corpus Christi School Districts; rest of aides cut were Spanish Americans.
Referred to HEW; no response.

Bogue, Miss. Received 9/22/67 (6984)
Fired for spurious reasons after she refused to sign Freedom of Choice Forms for pupils in her class to attend Lincoln Co. Training School without permission of parents.
Referred to HEW; no response.

Lauderdale, Tenn. Received 8/23/67 (6960)
No Negro faculty members will replace white no matter how much better qualified; board will use "classroom observer" to eliminate Negro teachers; formerly all-Negro schools' Negro principals replaced by whites.
Referred to HEW; no response.

Memphis, Tenn. Received 8/28/67 (6956)
Worked at Elmoor Park Junior High School as Kitchen help for 4 months, then began trying to use white employees' restroom, which was then locked -- white employees used a key; Negroes use public restroom farther from kitchen; not rehired because she tried to use white restroom, and superior, principal and others did not like it; white help addressed with courtesy titles, but not Negroes.
Referred to HEW; no response.

Marianna, Ark. Received 8/8/67 (6945)
Negro principal in Moro School District B not rehired by new district.
Referred to HEW; acknowledgement, no substantive response.

Clarksville, Texas Received 8/14/67 (6923)
Negro principal, Negro teachers on staff of all Negro school replaced by whites; no whites attend the school.
Referred to HEW; responded case will be reviewed, no further reply.

Los Angeles, Calif. Received 7/20/67 (6911)
School in Los Angeles City School System had no Spanish-speaking faculty although school is 85% Mexican American.
Referred to HEW; no response.

Vanceboro, N. C. Received 6/12/67 (6871)
Segregated white faculty at Farm Life High School and Craven County Schools. HEW reported it has not approved County's school desegregation plan for 1964-1968, no further report.

Magnolia, Ark. Received 5/8/67 (6849)
Two Negro teachers informed contracts would not be renewed following school consolidation of Negro Damascus High School with white school; qualified, but there are "no openings"; more qualified than some of teachers on white school staff.
Referred to HEW; no response.

Stillwater, Okla. Received 6/1/67 (6848)
Two Negro teachers at Washington School which will close this year have been denied an opportunity to teach in an integrated school, but have been offered kindergarten assignments for fall '67; both teachers have taken graduate courses at Oklahoma State Univ. Referred to HEW; no response.

SEGREGATED SCHOOL ACTIVITIES

Charlotte, N.C. Received 6/2/69 (7791)
Central Piedmont Community College is teaching golf classes on various private, segregated golf courses.
Referred to HEW; no response from HEW.

Isle of Wight, Va. Received 5/19/69 (7765)
Negro students prevented from participating in social activities such as proms.
Referred to HEW; no response from HEW.

Birmingham, Ala. Received 4/29/69 (7736)
Discrimination against Negro students at Jones Valley High School in all social events and honor assignments.
Referred to HEW; no response.

Isle of Wight, Va. Received 10/31/68 (7487)
Smithfield High School Stadium charging Westside High School (all—Negro) $150 for use of stadium, which is only one in town.
Referred to HEW; replied HEW has no jurisdiction.

Prince George County, Va. Received 9/12/68 (7429)
Negro Students excluded from band at Prince George County Senior High School.
CCR received copy of complaint sent to HEW.

Cordova, Ala. Received 9/3/68 (7417)
Walker County Bank and First National Bank refused student loan to Negro.
Referred to HEW and Treasury; Treasury replied it has no jurisdiction; HEW has given no response.

Barnwell, S. C. Received 1/8/68 (7077)
Negroes' pictures not taken for annual; called names, no action taken; not called on in English and Shorthand classes; not given opportunity to participate in clubs or May Day program at Barnwell High School.
Referred to HEW; no response.

MISCELLANEOUS

Memphis, Tenn. Received 1/27/69 (7576)
Student dismissed by Methodist Hospital School of Nursing because of insistence on rooming with Negro student.
Referred to HEW; no response.

Sierra Blanca, Texas Received 5/6/68 (7222)
Two children whipped, sympathetic teachers not rehired. No Mexican-American on school board.
Referred to HEW; HEW replies that case solved locally.

Baton Rouge, La. Received 10/20/66 (6629)
Negro was told by Baton Rouge Vocational Technical School he could take course in plumbing but was then told he would have to join Union first; Union told him he had to be a school enrollee first.
HEW "got" complainant into school - he dropped out - apparently. There was no real solution and he still could not get work - unsatisfactory solution.

APPENDIX C

The following is the complete text of the joint statement issued July 3, 1969, by the Attorney General and the Secretary of Health, Education, and Welfare.

Department of Justice

STATEMENT BY

THE HONORABLE ROBERT H. FINCH

SECRETARY OF THE

DEPARTMENT OF HEALTH, EDUCATION AND WELFARE

AND

THE HONORABLE JOHN N. MITCHELL, ATTORNEY GENERAL

EMBARGOED
NOT FOR RELEASE UNTIL
5:00 P.M. E.D.T.
JULY 3, 1969

I. INTRODUCTION

This administration is unequivocally committed to the goal of finally ending racial discrimination in schools, steadily and speedily, in accordance with the law of the land. The new procedures set forth in this statement are designed to achieve that goal in a way that will improve, rather than disrupt, the education of the children concerned.

The time has come to face the facts involved in solving this difficult problem and to strip away the confusion which has too often characterized discussion of this issue. Setting, breaking and resetting unrealistic "deadlines" may give the appearance of great federal activity, but in too many cases it has actually impeded progress.

This Administration does not intend to continue those old procedures that make satisfying headlines in some areas but often hamper progress toward equal, desegregated education.

Our aim is to educate, not to punish; to stimulate real progress, not to strike a pose; to induce compliance rather than compel submission. In the final analysis Congress has enacted the law and buttressed the Constitution, the courts have interpreted the law and the Constitution. This Administration will enforce the law and carry out the mandates of the Constitution.

A great deal of confusion surrounds the "guidelines." The essential problem centers not on the guidelines themselves but on how and when individual school districts are to be brought into compliance with the law.

The "Guidelines" are administrative regulations promulgated by the Department of Health, Education and Welfare, as an administrative interpretation, not a court interpretation, of the law. Frequently, the policies of the Department of Justice, which is involved in law suits, and the Department of Health, Education and Welfare, which is involved in voluntary compliance, have been at variance.

Thus, we are jointly announcing new, coordinated procedures, not new "Guidelines."

In arriving at our decision, we have for five months analyzed the complex legacy that this Administration inherited from its predecessor and have concluded that such a coordinated approach is necessary.

II. THE LAW

Fifteen years have passed since the Supreme Court, in Brown v. Board of Education, declared that racially segregated public schools are inherently unequal, and that officially-imposed segregation is in violation of the Constitution. Fourteen years have passed since the Court, in its second Brown decision, recognized the tenacious and deep-rooted nature of the problems that would have to be overcome, but nevertheless ordered that school authorities should proceed toward full compliance "with all deliberate speed."

Progress toward compliance has been orderly and uneventful in some areas, and marked by bitterness and turmoil in others. Efforts to achieve compliance have been a process of trial and error, occasionally accompanied by unnecessary friction, and sometimes resulting in a temporary--but for those affected, irremediable--sacrifice in the quality of education.

Some friction is inevitable. Some disruption of education is inescapable. Our aim is to achieve full compliance with the law in a manner that provides the most progress with the least disruption and friction.

The implications of the Brown decisions are national in scope. The problem of racially separate schools is a national problem, and we intend to approach enforcement by coordinated administrative action and court litigation.

III. SEGREGATION BY OFFICIAL POLICY

The most immediate compliance problems are concentrated in those states which, in the past, have maintained racial segregation as official policy. These districts comprise 4477 school districts located primarily in the 17 southern and border states. 2994 have desegregated voluntarily and completely; 333 are in the process of completing desegregation plans; 234 have made an agreement with the Department of Health, Education and Welfare to desegregate at the opening of the 1969-70 school year; under exemption policies established by the previous Administration, 96 have made such an agreement for the opening of the 1970-71 school year.

As a result of action by the Department of Justice or private litigants, 369 districts are under court orders to desegregate. In many of these cases the courts have ordered the districts to seek the assistance of professional educators in HEW's Office of Education pursuant to Title IV.

A total of 121 school districts have been completely cut off from all federal funds because they have refused to desegregate or even negotiate. There are 263 school districts which face the prospect, during the coming year, of a fund cutoff by HEW or a lawsuit by the Department of Justice.

These remaining districts represent a steadily shrinking core of resistance. In most Southern and border school districts, our citizens have conscientiously confronted the problems of desegregation, and have come into voluntary compliance through the efforts of those who recognize their responsibilities under the law.

IV. SEGREGATION IN FACT

Almost 50 percent of all of our public elementary and secondary students attend schools which are concentrated in the industrial metropolitan areas of the 3 Middle-Atlantic states, the 5 northern midwestern states and the 3 Pacific coast states.

Racial discrimination is prevalent in our industrial metropolitan areas. In terms of national impact, the educational situation in the north, the midwest and the west require immediate and massive attention.

Segregation and discrimination in areas outside the south are generally de facto problems stemming from housing patterns and denial of adequate funds and attention to ghetto schools. But the result is just as unsatisfactory as the results of the de jure segregation.

We will start a substantial program in those districts where school discrimination exists because of racial patterns in housing. This Administration will insist on non-discrimination, the desegregation of faculties and school activities, and the equalization of expenditures to insure equal educational opportunity.

V. NEW PROCEDURES

In last year's landmark Green case, the Supreme Court noted: "There is no universal answer to the complex problems of desegregation; there is obviously no one plan that will do the job in every case. The matter must be assessed in light of the circumstances present and the options available in each instance." As recently as this past May, in Montgomery v. Carr, the Court also noted that "in this field the way must always be left open for experimentation."

Accordingly, it is not our purpose here to lay down a single arbitrary date by which the desegregation process should be completed in all districts, or to lay down a single, arbitrary system by which it should be achieved.

A policy requiring all school districts, regardless of the difficulties they face, to complete desegregation by the same terminal date is too rigid to be either workable or equitable. This is reflected in the history of the "guidelines."

After passage of the 1964 Civil Rights Act, an HEW policy statement first interpreted the Act to require affirmative steps to end racial discrimination in all districts within one year of the Act's effective date. When this deadline was not achieved, a new deadline was set for 1967. When this in turn was not met, the deadline was moved to the 1968 school year, or at the latest 1969. This, too, was later modified, administratively, to provide a 1970 deadline for districts with a majority Negro population, or for those in which new construction necessary for desegregation was scheduled for early completion.

Our policy in this area will be as defined in the latest Supreme Court and Circuit Court decisions: that school districts not now in compliance are required to complete the process of desegregation "at the earliest practicable date"; that "the time for mere 'deliberate speed' has run out"; and, in the words of Green, that "the burden on a school board today is to come forward with a plan that promises realistically to work, and promises realistically to work now."

In order to be acceptable, such a plan must ensure complete compliance with the Civil Rights Act of 1964 and the Constitutional mandate.

In general, such a plan must provide for full compliance now--that is, the "terminal date" must be the 1969-70 school year. In some districts there may be sound reasons for some limited delay. In considering whether and how much additional time is justified, we will take into account only bona fide educational and administrative problems. Examples of such problems would be serious shortages of necessary physical facilities, financial resources or faculty. Additional time will be allowed only where those requesting it sustain the heavy factual burden of proving that compliance with the 1969-70 time schedule cannot be achieved; where additional time is allowed, it will be the minimum shown to be necessary.

In accordance with recent decisions which place strict limitations on "freedom of choice," if "freedom of choice" is used in the plan, the school district must demonstrate, on the basis of its record, that this is not a subterfuge for maintaining a dual system, but rather that the plan as a whole genuinely promises to achieve a complete end to racial discrimination at the earliest practicable date. Otherwise, the use of "freedom of choice" in such a plan is not acceptable.

For local and federal authorities alike, school desegregation poses both educational and law enforcement problems. To the extent practicable, on the federal level the law enforcement aspects will be handled by the Department of Justice in judicial proceedings affording due process of law, and the educational aspects will be administered by HEW. Because they are so closely interwoven, these aspects cannot be entirely separated. We intend to use the administrative machinery of HEW in tandem with the stepped-up enforcement activities of Justice, and to draw on HEW for more assistance by professional educators as provided for under Title IV of the 1964 Act. This procedure has these principal aims:

--To minimize the number of cases in which it becomes necessary to employ the particular remedy of a cutoff of federal funds, recognizing that the burden of this cutoff falls nearly always on those the Act was intended to help; the children of the poor and the black.

--To ensure, to the greatest extent possible, that educational quality is maintained while desegregation is achieved and bureaucratic disruption of the educational process is avoided.

The Division of Equal Educational Opportunities in the Office of Education has already shown that its program of advice and assistance to local school districts can be most helpful in solving the educational problems of the desegregation process. We intend to expand our cooperation with local districts to make certain that the desegregation plans devised are educationally sound, as well as legally adequate.

We are convinced that desegregation will best be achieved in some cases through a selective infusion of federal funds for such needs as school construction, teacher subsidies and remedial education. HEW is launching a study of the needs, the costs, and the ways the federal government can most appropriately share the burden of a system of financial aids and incentives designed to help secure full and prompt compliance. When this study is completed, we intend to recommend the necessary legislation.

We are committed to ending racial discrimination in the nation's schools, carrying out the mandate of the Constitution and the Congress.

We are committed to providing increased assistance by professional educators, and to encouraging greater involvement by local leaders in each community.

We are committed to maintaining quality public education, recognizing that if desegregated schools fail to educate, they fail in their primary purpose.

We are determined that the law of the land will be upheld; and that the federal role in upholding that law, and in providing equal and constantly improving educational opportunities for all, will be firmly exercised with an even hand.

U. S. COMMISSION ON CIVIL RIGHTS

STATEMENT OF THE COMMISSIONERS ON FEDERAL ENFORCEMENT OF SCHOOL DESEGREGATION

Two months ago, the Attorney General and the Secretary of Health, Education, and Welfare announced a number of changes in the manner in which their Departments would in the future enforce the laws requiring desegregation of elementary and secondary schools. The statement of the Attorney General and the Secretary of HEW affirmed a commitment "to the goal of finally ending racial discrimination in schools, steadily and speedily...." Prior to this announcement, the Commission, in telegrams to the President, the Attorney General and the Secretary of Health, Education, and Welfare had urged that no action be taken to slow the pace of school desegregation.

The Commission withheld any public comment on the July 3 announcement until the staff of the Commission had had a chance to complete a thorough analysis and until the Department of Justice and the Department of Health, Education, and Welfare had had an opportunity to take action consistent with their statement.

> -----Since July 3, the House of Representatives has passed the Whitten Amendment, a measure that would restrict the Department of Health, Education, and Welfare's ability to enforce Title VI of the Civil Rights Act of 1964 by requiring it to accept freedom-of-choice plans for school desegregation and may well affect the acceptability of freedom-of-choice plans in the courts as well. The amendment was not opposed by the Administration in the House.

Also since that time, court orders have been entered and desegregation plans accepted which in our opinion postpone meaningful desegregation from 1969 to 1970, and the Secretary of HEW and the Department of Justice have taken the unprecedented step of requesting the courts to postpone effective school desegregation in Mississippi from this school year to 1970 and have also accepted delays in South Carolina and Alabama. To be sure, administrative actions were taken by HEW during the past several years and again this year to postpone school desegregation in various districts. These were made under the standards of the Guidelines and only under most exceptional circumstances. But it should be emphasized that what we are concerned with here is the Government's going into court at its own initiative and asking affirmatively for a postponement.

At the time the procedures were announced, the Attorney General is reported to have said that he preferred that the Nation watch what he did rather than focus on what he said. It is with this in mind that we find ourselves especially disheartened by the recent actions of HEW and of the Department of Justice in the cases in Mississippi, South Carolina, and Alabama. For the first time since the Supreme Court ordered schools desegregated, the Federal Government has requested in court a slow-down in the pace of desegregation. This request is particularly difficult to understand since as recently as July 3 the Secretary of HEW and the Attorney General announced that delays in desegregation beyond September 1969 would be granted only where a school district sustained "the heavy factual burden of proving that compliance with the 1969-70 time schedule cannot be achieved...." In Mississippi, however, the Secretary of HEW and the Attorney General urged delay on their own initiative. In South Carolina and in Alabama, the Government took other action to delay desegregation. Certainly those who have placed their faith in the processes of law cannot be encouraged.

We acknowledge that the Department of Justice, in some areas, has sought court orders compelling desegregation this Fall. Eight such suits have been filed in Georgia. But each of these suits was necessitated when the school district reneged on a promise already made to HEW. One can only speculate on whether the July 3 statement and the Government's action in Mississippi encouraged this reneging.

But the problems caused by these new procedures and recent actions, however, are likely to be dwarfed by the probable effects of the Whitten Amendment, if passed by the Senate and approved by the President.

Our analysis of the new procedures and recent actions has now been completed, and a copy is attached to this Statement. Based upon it, we make the following findings:

1. The new procedures and recent actions involving Federal efforts to bring about school desegregation appear to be a major retreat in the struggle to achieve meaningful school desegregation. See pp. 31 to 56 of the Report.

2. The statistics purporting to show the present extent of school desegregation which were contained in the July 3 joint statement of the Attorney General and of the Secretary of the Department of Health, Education, and Welfare give an overly optimistic, misleading and inaccurate picture of the scope of desegregation actually achieved. In fact, in a number of Southern States, relatively little desegregation of elementary and secondary schools has been accomplished in the last 15 years. See pp. 8 to 12, 35 and 36 of the Report.

3. One of the major fallacies in the claim of substantial desegregation is that many districts have violated the terms of the assurances they have signed, or of the court orders that have been entered against them. Adequate personnel is necessary to police compliance. Congress has ordered HEW to treat the North and the South equally in its enforcement efforts. As a result of this Congressional directive, the Department of Health, Education, and Welfare has recently reduced the number of its personnel working for desegregation of elementary and secondary schools in the Southern and Border States, and has increased the number of its personnel working on such problems in the North and West. In the past, we have found that its staff was inadequate to police the compliance of school districts in the South, and the reduction in personnel can be expected to further restrict its compliance efforts in that region. Although HEW has requested 75 additional employees from Congress, it is unlikely that these additional personnel will be sufficient to remedy this problem. See pp. 9 to 13, 30, and 47 to 51 of the Report.

4. Court orders to desegregate have not generally been as effective a means of desegregating elementary and secondary schools as administrative proceedings backed by the threat of a fund cutoff. One reason is that a number of Federal judges in the South have been unsympathetic to the necessity of eliminating racial segregation in elementary and secondary schools. As a result, they have been insensitive to the requirements of the appellate courts which Congress has set over them, and have by their direct actions and tolerance of the actions of others significantly retarded the pace of school desegregation in the cases before their courts. In addition, it is more difficult, under current law, to enforce a school board's compliance with a court order than it is to enforce, by the threat of withholding Federal funds, a school board's compliance with an HEW-approved voluntary plan. See pp. 31 to 46 of the Report.

   Accordingly, emphasis upon court orders rather than administrative proceedings as the vehicle of Federal efforts to desegregate schools can be expected to slow the pace of school desegregation. The situation is further aggravated by the limited Department of Justice personnel available to bring lawsuits as well as the laudable newly announced policy of extending desegregation efforts from the South into the North and West. See pp. 47 to 51 of the Report.

5. Although use of the threat of withholding Federal funds has proved to be the most effective means of enforcing school desegregation, the actual termination of funds, when not followed by Department of Justice litigation to enforce immediate desegregation, reportedly results in disproportionate harm to black students and their teachers. We recommend that the Department of Justice promptly bring lawsuits to require immediate desegregation as soon as a district's Federal funds have been finally terminated. We also recommend that Title IV of the Civil Rights Act of 1964 be amended to permit the Department of Justice to initiate school desegregation suits without the necessity of receiving a specific complaint — as is now the requirement. See pp. 31 to 33 of the Report.

6. Since passage of the Civil Rights Act of 1964, Congress has given inadequate support to HEW's attempts to enforce school desegregation — appropriations have been limited and some unnecessary restrictions placed on HEW's operating procedures. In part, the inadequacy of HEW's enforcement efforts in the past five years stems from the inadequacy of this support. HEW's request for additional personnel is now pending before the Senate and we urge its approval.

7. Passage of the Whitten Amendment, which would require the acceptance of freedom-of-choice plans, would slow or halt the progress of school desegregation. We believe that there is a serious chance that its passage would reverse some of the limited gains already made. See pp. 25 and 26 of the Report.

8. As we had previously found in our 1967 report, Southern School Desegregation: 1966-67, freedom-of-choice, since it places the full burden of desegregation upon the shoulders of black parents and their children — those who are politically, economically, and socially least able to bear it -- is not an effective means of desegregating elementary schools in the Southern and Border States. See pp. 14 to 26 of the Report.

   Because freedom-of-choice requires affirmative action by black parents before their children can attend an integrated school, its use, as a practical matter, has encouraged local

> white citizens to engage in campaigns of intimidation and economic retaliation against black parents willing to take such action. Similarly, white students and teachers frequently harass and punish the black children whose parents have chosen to send them to the formerly white-attended school. Consequently, many black parents are literally afraid to send their children to formerly white-attended schools; as to them, the "freedom" to choose the school their children will attend is illusory. See pp. 20 to 23 of the Report.

Fifteen years have passed since the Supreme Court decided that the right of black children to attend the same schools attended by other children was guaranteed by the Constitution. Five years have passed since Congress, in the Civil Rights Act of 1964, also declared that segregation violated the law of the land. But segregation is more than just simply a violation of the law. In 1967, we issued a Report, Racial Isolation in the Public Schools, which concluded that racial isolation, whether caused by de jure segregation, discriminatory housing patterns, or other factors, resulted in serious educational harm to the children of minority groups. Conversely, integration significantly boosted the educational achievement of these children. If this Nation truly respected the rule of law, if it truly cherished each of its children, the last vestiges of segregated education would have disappeared years ago. Instead, segregation continues as the pattern, and not the exception, of education in many States.

At this point, we can do no more than echo the words written recently by Justice Black:

> ... /T/here are many places still in this country where the schools are either "white" or "Negro" and not just schools for all children as the Constitution requires. In my opinion there is no reason why such a wholesale deprivation of constitutional rights should be tolerated another minute.

Similarly, we agree with Federal Judge Hoffman that:

> For an American who is devoted to his country and wants to believe in the intelligence and good-will of its citizens it is very painful to contemplate and difficult to understand continued resistance to school desegregation.

While progress has been slow, the motion has been forward and this is certainly no time to create the impression that we are turning back but a time for pressing forward with vigor. This is certainly no time for giving aid and comfort, even unintentionally, to the laggards while penalizing those who have made commendable efforts to follow the law, even while disagreeing with it. If anything, this is the time to say that time is running out on us as a Nation. In a word, what we need most at this juncture of our history is a great positive statement regarding this central and crucial national problem where once and for all our actions clearly would match the promises of our Constitution and Bill of Rights.

Thus, we are deeply concerned over the directions recently being taken in Federal efforts to desegregate elementary and secondary schools. We are committed to the purpose for which this Commission was created: to act as an objective, bipartisan factfinding agency and to continually apprise the President and the Congress of the facts as we see them. We speak out now since we believe our Government must follow the moral and legal principles and promises on which our Constitution and laws are based and meet the high expectations to which the people of this country have addressed themselves.

Rev. Theodore M. Hesburgh, C.S.C., Chairman

Stephen Horn, Vice Chairman-Designate

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September 11, 1969

ADDITIONAL STATEMENT
BY
VICE CHAIRMAN-DESIGNATE HORN

Civil rights is a national problem. Progress and blame can be shared by those in all three branches of our Government under several administrations and by people in all parts of our country.

Under the previous administration, the Department of Health, Education, and Welfare permitted 67 school desegregation plans submitted by districts in Southern States to be delayed for final implementation until September, 1970. Under the current administration, 51 school desegregation plans have been delayed for final implementation until September, 1970.

The easier tasks have been done. The most difficult problems still remain. All who serve in each of the three branches of our Federal Government and, indeed, all Americans should face up to them.

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